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THE Washington Law Reporter.

A WEEKLY JOURNAL

DEVOTED TO REPORTS OF

DECISIONS OF THE COURTS AND DEPARTMENTS

AT THE NATIONAL CAPITAL.

GEO. B. CORKHILL, Editor.

VOL. XIII.

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Washington Law Reporter

WASHINGTON - - - - - - - . January 8, 1885

GEORGE B. CORKHILL - - - EDITOR

Fixtures Annexed for Agricultural Purposes.

Fixtures are chattels, or articles of a personal nature, which have been affixed to the land in such a manner as to constitute part of the realty to which they adhere, and do, therefore partake of its incidents and properties. According to the common law, it was waste for the tenant to take down or remove anything affixed to the freehold, even although he had originally put it up for his own use. (Taylor's Landl. & Ten., 544. Co. Lit. 53, *n.*) Anciently this rule applied to all fixtures equally, and no exceptions were recognized; but gradually and almost imperceptibly there grew up and became firmly established the now well-known exceptions in favor of fixtures erected for the purpose of ornament, domestic convenience, or to carry on trade. (Taylor's Landl. & Ten. *Ibid.* Bouvier's Law Dict. Tit. Fixtures, 5, and cases cited. Fitzherbert v. Shaw, 1 H. Bl., 258, and cases cited by court, and also Lawton v. Salmon, East, 22 Geo. III, B. R. Poole's case, 1 Salk. 368.) Yet it has always been recognized that this privilege has not been extended to fixtures erected for agricultural purposes. Taylor's Landl. & Ten., 548. Bouvier's Law Dict., Tit. Fixtures, 5, Elwes v. Mawe. 3 East. 38. While this is undoubtedly the law in England to-day, and, perhaps, would be so considered in many of the United States without any express decisions of the courts of this country on the subject; yet, upon examination of those uses in which the courts have dwelt upon this subject, it will be observed that there is a strong tendency to break away from the old rule, and to extend the privilege so as to include fixtures erected for agricultural purposes. Probably the leading case upon the subject in this country is that of Van Ness v. Packard (2 Peters' R., 137) decided in the Supreme Court of the United States, where Mr. Justice Story, in delivering the opinion of the court, questioned whether the English doctrine, as laid down in the leading case of Elwes v. Mawe (3 East. R., 38) was applicable to the circumstances of this country, "and," as Mr. Taylor (Taylor L. & Ten., 548) says, "in fact, seems clearly to have repudiated it." In the case of Dubois v. Kelley (10 Barb. R., 496) the Supreme Court of New York laid down the broad doctrine that a tenant, who has made additions or improvements upon the land, for the purpose of its better use and enjoyment, might remove such additions and improvements at any time before the expiration of his term, applying the rule to all erections for agricultural purposes as well as to those already within this privilege. The New York Court of Appeals, however, refused to accept the rule in such broad terms, in the case of Curborn v. Jones (19 N. Y. R., 234), and Judge Comstock, in delivering the opinion of the court, said that he thought that the rule as laid down was somewhat too broadly stated, and considers that the adjudged cases do not carry out so general a doctrine, and, after citing the general rule that whatever is affixed to the realty becomes part of it and partakes of all its incidents and properties, he adds that this is the rule even in the relation of landlord and tenant; but that while many exceptions have been engrafted upon it, yet the rule itself has not been reversed, and, therefore, must not be lost sight of. This doctrine is manifestly more narrow than that laid down by the Supreme Court of the United States in the case of Van Ness v. Packard, *supra.* Again, in Massachusetts, the court, in the case of Whiting v. Braston (4 Pick. R., 310), extends the rule applicable to trade fixtures to

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those erected for agricultural purposes And in that case the court permitted the tenant to remove all improvements, the removal of which would not injure the inheritance. This injury to the inheritance must be something more than nominal. (Cooley on Torts, 430, n. 2, and cases.) Thus it will be seen from this short review of these cases that there is a growing tendency on the part of our oourts to throw aside the stern English doctrine, and apply one more suited to our circumstances. The common law of England grew up with reference to England, and were it not for its justice, its wisdom, and its flexibility, it would never have become the foundation of our system of jurisprudence; and such being the birth place of our common law, manifestly, in this country, so vastly different from England, it could not, in spite of its precious qualities, ever, under all circumstances, in all conditions, places, and times, cover the many new phases of life that spring up without a moment's warning, and take firm root among the mighty industries of this country. England has seen the harshness of her law on this subject, and has, by the statute 14 and 15 Vic., c. 25, put the tenant in a much better condition than he is under the old rule of the common law. Mr. Justice Story, in the case of Van Ness v. Packard, *supra*, speaking of the distinction between fixtures erected for the purposes of trade, and fixtures erected for agricultural purposes, says:

"The distinction is certainly a nice one between fixtures for the purposes of trade and fixtures for agricultural purposes; at least in those cases where the sale of the produce constitutes the principal object of the tenant, and the erections are for the purpose of such a beneficial enjoyment of the estate. But that point is not now before us; and it is unnecessary to consider what the true doctrine is or ought to be on this subject. However well settled it may now be in England, it cannot escape remark that learned judges, at different periods in that country, have entertained different opinions upon it, down to the very date of the decision in Elwes v. Mawe, 3 East, 38."

And Mr. Taylor (Taylor Landl. & Ten. 548) says that "it is difficult to perceive why such fixtures should stand upon a less favorable footing than trade fixtures, when the relative importance of the two arts to the community is considered. The industry of the farmer will, of course, be more productive in proportion to the improved condition of his buildings, and his advantages for rearing stock and storing produce; and it seems but a narrow policy which refuses to the agricultural tenant the same protection that is extended to the improvements of the manufacturer." (See also Bouvier's Law Dict., Tit. Fixtures, 5 *ad finem.*) The whole doctrine of fixtures, whether they become a part of the realty, or remain personal property; in reference to purchasers and others who have interests in the property must be reduced to general rules, as "it would not only be impolitic, but in many cases unjust, to suffer a secret intent to control where appearances would indicate the existence of an intent of a different nature." (Cooley on Torts, 428) and while this has been done with respect to those fixtures erected for the purposes of trade; yet it is considered that, before a great while, these rules will be so extended generally as to include also all fixtures erected for the purposes of agriculture, and this seems to be supported by the cases already mentioned.

THE international electrical exhibition at Philadelphia closed Saturday. The net profits of the affair were about $50,000.

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Supreme Court District of Columbia

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

THE DISTRICT OF COLUMBIA

vs.

THE WASHINGTON GAS LIGHT COMPANY.

LAW. No. 24,652.

Decided December 15, 1884.
The CHIEF JUSTICE and Justices MAC ARTHUR and JAMES sitting.

1. The joint resolution of Congress of April 24, 1880, adopting and legalizing certain ordinances of the Board of Health of the District of Columbia rendered those ordinances the laws of the District; and the Police Court of the District of Columbia has jurisdiction to impose and enforce the penalties set forth therein.
2. Bates v. The District of Columbia, 1 Mac A., 493, so far as it refers to the powers of Congress and of the Board of Health in respect of nuisances, questioned.
3. An information charging that the defendant "did then and there commit, create and maintain a nuisance injurious to health, consisting of crushing, grinding and burning of shells, whereby noisome stenches and noxious gases arise and are generated," charges a nuisance at common law.
4. When an inferior court is proceeding beyond or without its jurisdiction, the writ of *certiorari* is the proper remedy, but not for mere matters of form and procedure; and it *seems* that the writ ought never to issue where there is a right of appeal, unless the jurisdiction is called in question, or unless some specific reason is shown why the writ should issue, as that a party has lost his right of appeal through mistake or inadvertence or the like.
5. An objection that the information contains the signature of the prosecuting attorney in printed type, instead of the same being written, is one which relates merely to a matter of form and procedure, which is amendable.

STATEMENT OF THE CASE.

This case was commenced in the Police Court of the District of Columbia, by information filed by the attorney for the District, and charging the defendant with violating an ordinance of the Board of Health against nuisances. Upon application to the Circuit Court of the District of Columbia a *certiorari* was issued, and the case coming up in that court was certified to the General Term to be heard in the first instance.

The information charged the defendant with "creating and maintaining a *nuisance* injurious to health, consisting of crushing, grinding and burning of shells, whereby noisome stenches and noxious gases arise and are generated, which is contrary to and in violation of section 21 of an ordinance of the Board of Health of the District of Columbia," &c.

Instead of a written signature the information had annexed to it the printed name of "A. G. Riddle, attorney for the District of Columbia."

Section 21 of the ordinances of the District of Columbia, legalized by joint reslution of Congress, April 24, 1880, No. 25, is to this effect:

"The crushing, grinding, or burning of bones or shells, or any other business or trade whereby noisome stenches and odors and noxious gases arise or are generated within the cities of Georgetown or Washington, are hereby declared nuisances injurious to health, *and after due notice from this board* to abate the same, shall, upon conviction thereof, be fined not less than ten nor more than one hundred dollars for every such offence."

And it is further provided in the 27th section:

"That all fines and penalties imposed by any section of this ordinance shall be collected by prosecution in the Police Court or other proper court of the District of Columbia, by information filed in said court, *at the instance of the Board of Health.*"

The questions submitted at the hearing were the validity of the ordinance, and, if valid, whether the Police Court of the District of Columbia has jurisdiction to impose and enforce the penalty set forth.

A. G. RIDDLE and FRANCIS MILLER for the District.

H. R. WEBB for the defendant.

Mr. Justice MAC ARTHUR delivered the opinion of the court.

I am authorized by the court to announce its decision in the case of the District of Columbia against the Washington Gas Light Company, which in the argument was associated with the same plaintiff against Smith.

It was a prosecution commenced by information in the police court, to recover a penalty against the defendants for maintaining a nuisance injurious to health. It appears from a statement in the petition that the defendant's plea to the court's jurisdiction was overruled. An application was then made for a writ of *certiorari* to bring the case up here.

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The main question to be determined is one of jurisdiction, and the writ of *certiorari* is the appropriate proceeding to raise that question. There are questions in this case in regard to the form of the complaint, but the main question relates to the jurisdiction of the police court in the first place, and, in the second, to the validity of the law under which the proceeding was laid.

It will be remembered that, by the organic act, provision was made for the appointment of a Board of Health. They were authorized to adopt such regulations as were necessary in regard to nuisances injurious to health. They devised a code of ordinances relating to that subject that were quite exhaustive in their nature, referring to every matter that could affect the public health. It will also be remembered that that board was abolished by the act of June 11, 1878, and their powers transferre dto the Commissioners. The validity of these ordinances was passed upon by this court in the case of The District of Columbia against Bates, which was a proceeding commenced like this in the police court to recover a penalty for sustaining a nuisance injurious to health. 1 Mac A., 433. A majority of the court came to the conclusion that Congress could not delegate the power of making these ordinances to the Board of Health, and that the board had not the power of defining what should be nuisances injurious to health. Probably, in view of that decision, Congress, on the 24th of April, 1880, passed a joint resolution adopting and legalizing these ordinances of the Board of Health by their titles, without incorporating into the resolution itself the terms in which the ordinances were expressed. The first section of that act refers distinctly to "an ordinanee to revise, consolidate and amend the ordinances of the Board of Health, to declare what shall be deemed nuisances injurious to health, and to provide for the removal thereof," and it legalizes that ordinance, and a number of other ordinances are stated by their titles and legalized also, and declared to be the law of the District.

These ordinances have been subjoined by Mr. Richardson to his supplement to the Revised Statutes on page 574 in a note and extend through several pages of very fine print. They relate to every conceivable subject, properly so too, relating to the safety, comfort and decency of the city, and if the District is without this law, it has no means of protecting its decency or its comfort, and, indeed, it would become uninhabitable for human beings. The court would not be disposed by judicial decision to abrogate an act of Congress relating so extensively and emphatically to the well being of the inhabitants of the capital, and we think that we are not compelled to do so.

The objection to the legislation is that it is vague and uncertain, and that the resolution does not embody the law which it seeks to enact, &c. We suppose that it is quite competent for Congress to adopt a law by reference to it, to adopt any provision that has been completed by reference to it, if that reference is clear, distinct and unmistakable, and this we think Congress has done, and if the judges of this court should hold that any vagueness, that any uncertainty or any want of distinctness, arises out of this resolution, I think that they would be the only three individuals in the United States who would announce such a preposterous proposition with any expectation of receiving credit for sanity. We hold very clearly to the opinion that this resolution is not void for the reason of uncertainty or indistinctness.

In addition to what appears upon the face of the resolution itself, I have already referred to the fact that Mr. Richardson in his supplement has subjoined the ordinances, in full, not only by their titles, but the body and contents are published, and then by a distinct resolution at the same session Congress declares: "The supplement to the Revised Statutes embracing the statutes, general and permanent in their nature, passed after the Revised Statutes, with references, connecting provisions on the same subject, explanatory notes, citations of judicial decisions, and a general index prepared by William A. Richardson, be stereotyped at the government printing office, and the indexes and plates thereof, the right and title therein and thereto shall be in and fully belong to the government for its exclusive use," &c. And the close of the resolu-

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tion is in the following language:

"The publication herein authorized shall be taken to be *prima facie* evidence of the laws therein contained in all the courts of the United States."

A discrimination might perhaps be made upon the language which I have just read. It relates to "laws therein contained;" that language would not apply to the notes subjoined, and we are not disposed to say that that is not a fair and a just distinction to make. The only reason why we allude to it now, is to show the clearness and the distinctness with which those ordinances are pointed out, and any man that can read fine print can understand what they are.

There was another matter in this connection which I think I may with propriety allude to. Referring again to The District of Columbia against Bates, the doctrine was there announced that the Board of Health could not adopt regulations in the form presented by these ordinances, declaring what should be a nuisance injurious to public health. I think the authority of that decision is very much shaken by the decision of the Supreme Court of the United States in the case of Barnes v. The District of Columbia. That was an action brought by the plaintiff to recover damages for an injury received by the negligence of the District of Columbia, in leaving an excavation in a street open, into which he fell and from which he received the injuries complained of. The District in that case took the ground that the Board of Public Works had entire control of the public streets, and that they were authorized by the organic act to adopt such regulations as might be necessary for their preservation and repair; that the officers composing the Board of Public Works were appointed by the President, with the consent of the Senate,; that they were paid by the United States, and were therefore a body, a quasi corporation as it were, distinct from the general government of the District, and for whose negligence the District was not responsible. This court was convinced that such ought to be the construction of the organic act, and pronounced against the remedy in that case.

The Supreme Court reversed that decision and held that the Board of Public Works was simply a part of the municipal government, an agency provided for by law for the purpose of carrying out the details of municipal authority and meeting municipal necessities, and that the District was therefore responsible for their conduct or misconduct. Mr. Justice Hunt, who delivered the opinion, refers at large to the various powers which were delegated to the different branches of the municipal government, as, for instance, that it provided for a Board of Health, for a Board of Public Works, a Legislative Assembly, &c., and distributed the various functions of municipal duty among these various agents, but that in point of fact they all constituted the corporation, and so they held that the District was responsible.

Now, if it be true, according to the doctrine of the Supreme Court, that Congress could delegate to the Board of Public Works a right to pass regulations for the control, repair, &c., of the streets, it seems scarcely less logical, and less legal, that they could delegate to the Board of Public Health the power of passing regulations on that subject. It was really of more vital consequence to the community than any other branch of duty which they delegated to these sub-agencies, so that I think I am justified in saying that the case of Barnes v. The District of Columbia, 91 N. S. 540, shakes to a very great extent the authority of this court in The District of Columbia against Bates. If nothing else was wanted, however, to completely set that decision aside in this particular matter, it would be the legislation of Congress to which I have just referred.

Again it was argued that, quoting as authority the Bates case, neither the Board of Health nor Congress could declare a nuisance injurious to health, and they could declare nothing a nuisance which was not one at common law. This doctrine I presume by fair interpretation of that decision may be deduced from it, but I think no one will read it calmly now without thinking that our lamented and learned brother Olin rather over-stated the law when he said that such an act was beyond the power of Congress. But

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whether Congress has that power or not, we know that if they have not power to declare nuisances injurious to health, that they can have very little authority over municipal powers, because the police regulations of a densely inhabited city, its sanitary regulations and necessities, are of such importance that that power must reside somewhere else than in the common law. We think it is a just conclusion that Congress may declare what is a nuisance injurious to health. But whether it can or not, there is no doubt of one thing, that the complaint in this case does describe a nuisance at common law, or what would constitute a nuisance at common law. It declares "that the Washington Gas Light Company, late of the county of Washington aforesaid, on the 21st day of July, in the year of 1883, and on divers other days between said day and the day of the filing of this information, in the District aforesaid, and in the city of Washington, near unto, in or upon divers public streets, and also near unto the dwelling houses of divers good citizens of the District of Columbia, to wit, on lot on corner," &c., describing the locality, "did then and there commit, create and maintain a nuisance injurious to health, consisting of crushing, grinding and burning of shells, whereby noisome stenches and noxious gases arise and are generated, which is contrary to and in violation of," &c.

Well, now a condition of things from which arise noxious gases, noisome stenches, &c., what are they but nuisances, that the common law would take cognizance of? It appears to us that the argument on all the points against the power of the court to enforce these ordinances must fall.

Then in regard to the writ of *certiorari*. There is no doubt that where an inferior court is proceeding beyond or without its jurisdiction, the writ of *certiorari* is the proper remedy, and the court appealed to in such a case for the writ will grant it and will restrain such inferior court. This, however, will only arise on the question of jurisdiction, and not as to matters of form and procedure. We have therefore taken cognizance of this *certiorari* for the purpose of settling the question of jurisdiction.

Another question relating to the jurisdiction is, granting that this law is valid, can it be enforced in the Police Court, when it has no jury by which a party can have his rights adjusted? I suppose that question is *stare decisis* with us. The right of trial by jury is secured by an appeal to this court, and that is a substantial compliance with the provision of the Constitution on that subject; I believe that finally does dispose of all constitutional questions.

What I said about the proper office of the writ of *certiorari* would come in appropriately at this point. Objections are taken to the complaint that there is no prayer for process and that it does not allege notice. The 21st section of the ordinances is the one upon which this complaint is founded. It provides for the punishment of whoever shall "continue any such nuisance, and who shall fail, *after due notice* from the board, to abate the same"; and it is declared that there is no allegation of notice in the complaint. It is also objected that the name or signature of the district attorney is printed in Roman characters and not in writing. We think that these relate to mere matters of form and procedure and are amendable. It would be very easy to pray process, and to allege notice. We ought not to encourage writs of *certiorari* for mere matters of form, and the courts do not. The old Supreme Court of New York was troubled with applications of this kind, and they finally decided broadly the doctrine that writs of *certiorari* should never issue, where there was a right of appeal, and the party could have a remedy in a superior court, unless the jurisdiction was called in question or unless some specific reason was shown why the writ should issue, as that a party has lost his right of appeal through mistake or inadvertence, or something of that kind. So we do not think that we ought to pass upon these questions, and simply decide that a writ of *certiorari* does not lie for such complaints as the objections which I have just mentioned.

Our conclusion upon the whole is that this writ must be quashed or discharged, and that an order of *procedendo*, must be entered in the case to return it to the Police Court for further proceedings.

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Question of Pleading.

Supreme Court—General Term.

LEOPOLD LITHAUER, as assignee, &c., respondent, against ROBERT TAGGERT, impleaded, appellant.

Appeal from order of the Special Term, denying motion for leave to file amended and supplemental answer to the complaint.

HAIGHT, J.: The complaint in this action alleges that the plaintiff is the assignee for the benefit of creditors of Dodge & Sinclair; that prior to the assignment Dodge & Sinclair were the owners of the goods mentioned in the complaint; that one Cateley was a clerk in their employ; that Cateley and Dodge and Sinclair arranged that the goods in question should be delivered to the defendant, Taggert, a warehouse keeper, to be kept and stored by him in the name of Cateley. The complaint further alleges that the defendant, Taggert, knew of the arrangement, and that the goods in fact belonged to the firm of Dodge & Sinclair; that after the assignment, the plaintiff demanded the goods of the defendant, and offered to pay the amount due him for storage, and that he refused to deliver up the goods, but converted them to his own use, for which the plaintiff demands judgment in the sum of $7,818.20, the value of the goods.

The defendant, Taggert, in his answer, denies that the goods were owned by the firm of Dodge & Sinclair, or that he knew of any arrangement by which the goods were deposited with him by that firm in the name of Cateley, and alleges that Cateley is a merchant and broker doing business upon his own account; that he deposited the goods with the defendant, Taggert, in his own name, and that he directed this defendant not to deliver the goods in question to Dodge & Sinclair, or their assignee; that he has no claim upon the goods except his dues as a warehouse keeper for the storage of the goods, &c. Subsequent to the service of the defendant's answer, an attachment was issued in an action pending in favor of Hoyt, Fayerweather & Ladew against Dodge & Sinclair, and the attachment was levied upon the goods in question by the sheriff; that subsequently judgment was perfected in such action, execution issued thereon, and the goods sold upon such execution and applied upon the judgment so obtained. The defendant then moved the court for leave to interplead or to serve a supplemental answer. This motion was denied, and an appeal was taken from the order denying the same. Leave was then procured to renew the motion for leave to serve an amended and supplemental answer. The motion was renewed and denied. From such order an appeal was also taken.

The appeal from the first order was waived by the defendant when he procured leave to renew the motion (Harris v. Brown, 29 Hun, 477; affirmed in the Court of Appeals.)

The questions presented by the appeal from the last order is as to whether the matter set forth in paragraphs 5, 6 and 7 of the proposed amended answer constitutes a defence, in whole or in part. The matter set forth in the 5th paragraph in substance is, that the assignment to the plaintiff made by the firm of Dodge & Sinclair, was with the intent to hinder, delay and defraud the creditors of such firm, and was therefore fraudulent and void. The matter set forth in the 6th and 7th paragraphs alleges the issuing of the attachment, its levy upon the property, the perfecting of the judgment, the issuing of the execution thereon, and the sale of the property under the execution.

We do not understand that the defendant, as warehouse keeper of the goods, would have a right to question the validity of the assignment upon the ground that it was made to hinder, delay and defraud creditors. As between the plaintiff and the assignors, the assignment is valid. The creditors who have been defrauded by the assignment, alone would be entitled to question its validity. The defendant, as the custodian of the goods, would be protected from liability in delivering the goods to the assignee upon demand, unless restrained at the instance of the creditors. Sheridon v. The Mayor, 68 N. Y., 30.

If, however, as alleged, the defendant has been compelled under the process of the court to apply these goods in the payment of the debts of a judgment creditor, then, in equity, he has a right to be subrogated to the rights of the judgment creditor. And, as such judgment creditor, he would have the right to contest the validity of the assignment.

It is claimed on the part of the plaintiff that the seizure of the goods and attachment, and their subsequent sale upon execution, is no defence; that the property was previous to the seizure converted by the defendant to his own use; that he is therefore liable for the same. It is true that this matter would not constitute a defence for the conversion, but the plaintiff, under the assignment, is not the owner of the goods in his own right, but as trustee for the creditors of Messrs. Dodge & Sinclair, the assignors. If the goods which the plaintiff seeks to recover, and which he alleges the defendant has converted, have subsequent to such conversion been applied in the payment and satisfaction of the claims of

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the creditors, then we fail to see why that fact may not properly be considered in mitigation of the damages. Ball v. Liney, 48 N. Y., 6.

The conclusion that we have reached is, that the amendments should have been allowed.

Order reversed, with ten dollars costs and disbursements, and motion granted upon payment of ten dollars costs for opposing the motion.

Supreme Court of Pennsylvania.

DODGE'S APPEAL.

Wills: Construction of; When the word Heirs does not Include Widow.—Testatrix devised certain real estate to her brother in trust, to permit her husband to occupy or rent the same, and to receive, take, hold and enjoy the rents, issues, profits and incomes thereof to his own use absolutely during life, and after his decease, one-third of the rents, issues and profits, to be paid to her son during the term of his natural life, and from and after his decease, to rest absolutely in his heirs forever.

Held, That the word "heirs" did not include the son's widow, and she was not entitled to his share of the estate.

Appeal of Caroline E. Dodge and Sarah V. Blake from the decree of the Orphans' Court of Philadelphia county.

Opinion by Sterrett, J., October 6, 1884.

This contention hinges on the construction of the hereinafter quoted clause in the will of Mrs. Letitia G. Ryan, who died, leaving her husband, a son, and two daughters surviving her. The testatrix devised certain real estate to her brother, Samuel White, in trust to permit her husband to occupy or rent the same, "and to receive, take, hold and enjoy the rents, issues, profits and income thereof to his own use absolutely" during life; and, after his decease, "one-third of the aforesaid rents, issues, profits and income to be paid to Caroline E. Dodge, one-third to be paid to Sarah Virginia Blake, and the remaining third to be paid to Edward W. Ryan, for the term of their natural lives respectively, and from and after their decease to vest absolutely in their heirs forever." The passive trust in favor of testatrix's husband having terminated at his decease, the active trust for the benefit of her son and daughters commenced and continued until the death of her son, Edward W. Ryan, who died in January, 1883, intestate and without issue, leaving a wife, Amelia Ryan, the appellee, surviving him. Letters of administration on his estate were granted to her in the State of Oregon; and, as such administratrix, she received the arrears of income due her husband up to the date of his decease. She then claimed, as his heir, under the clause of the will above quoted, one-third of the income since accrued; and from the decree in her favor, this appeal was taken by her sisters-in-law. The devise to the trustee was coupled with a qualified power of sale, which was never executed; but the land devised was sold on a mortgage, the lien of which antedated the title of testatrix. After payment of the mortgage debt out of the proceeds of the sale, the residue was paid to the trustee, and thus became the *corpus* of the trust from which the income for distribution was realized. In view of the facts, it cannot be doubted that the fund represents real estate, and hence it must be distributed accordingly. The question thus presented by the record is whether, under Mrs. Ryan's will, the portion in which her son Edward had a beneficial interest during life now goes to his widow or to his sisters. In other words, is the widow the "heir," of her husband, or are the appellants his "heirs," according to the true intent and meaning of the will? If the fund for distribution were personalty, the widow would, perhaps, be entitled to participate therein; but, inasmuch as it bears the impress of realty, the one-third in which Edward had an equitable life interest was given by his mother's will to his "heirs forever." In the devise over of the remainder in fee, to take effect immediately upon the expiration of the equitable life interest respectively, the testatrix used the technical word "heirs," which in a will is to be understood in its legal or technical, and not in its popular, sense, unless the contrary intent is so plainly apparent that it cannot be misunderstood: Porter's Appeal, 9 Wright, 201; Eby's Appeal, 14 Id., 311; Tillman v. Davis et al., 95 N. Y., 17. No such intent is even suggested by the phraseology of the will in this case. There is nothing in the language of the testatrix to warrant the belief that she intended to use the word "heirs" in any other than its well settled legal signification, meaning those who, upon Edward's decease intestate, would take immediately from him an heritable estate. The heirs of a decedent are those of his kindred upon whom the law, immediately upon his decease, casts the estate in real property; and the estate, so descending to the heir, is called the inheritance: 2 Minor's Inst., 452; 2 Bl. Com., 201. It is contended that at common law neither the husband nor the wife could be heir to the other; and, while our Intestate Act has made some changes in the interest, to which a widow is entitled in the estate of her deceased husband, she is not, in any proper sense of the word, recognized as his heir, except, per-

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haps, in the case of his dying without "known heirs or kindred competent" to take, in which event alone an estate of inheritance is vested in the widow under the 10th section of the act. In all other contingencies, her interest in her husband's estate is unlike that of an heir. While she acquires an interest or estate in the land, and not a mere lien thereon, that interest is of a special and peculiar nature, essentially different from the estate of inheritance which the law casts upon the heir. For reasons thus briefly suggested, we think the conclusions of the learned judge are correct; that under his mother's will, Edward W. Ryan had merely an equitable life interest, and immediately upon his decease the remainder in fee passed absolutely to his "heirs," who, according to the true intent and meaning of the will, are his two surviving sisters.

The decree of the Orphans' Court is reversed at the costs of the appellee; and it is now considered and adjudged that the decree of the auditing ludge be affirmed.

Appellate Court, Fourth District of Illinois.

[From advance Sheets of XV Bradwell, Appellate Court Reports.]

FRANCIS HOGG *vs.* THE PEOPLE, ETC.

1. Where a number of persons assembled at a house for the purpose of dancing, and plaintiff in error was induced to go to a neighboring town and procure a jug of whiskey, and it was understood that he should contribute thirty cents of the price paid for the liquor, and the others the residue, some contributing before, others after, its procurement. *Held*, that an indictment will not lie against plaintiff in error for selling intoxicating liquors in less quantity than one gallon, without having a legal license to keep a dram shop.
2. The thirteenth section of the Dram Shop act should receive a fair and liberal construction and be strictly enforced, but at the same time it is to be interpreted within its true intent and meaning. and a thing within the intention is within the statute, though not within the letter, and a thing within the letter is not within the statute, unless within the intention.

Error to the County Court of Pope County; the Hon. Wm. V. Eldridge, Judge, presiding. Opinion filed October 10, 1884.

Baker, J.—Francis Hogg, plaintiff in error, was tried and convicted at the July term, 1884, of the county court of Pope county, upon an indictment for selling intoxicating liquor in less quantity than one gallon without having a legal license to keep a dram shop, and a judgment was entered against him for a fine of $60 and costs.

The substance of the transaction, upon which the indictment is predicated, was that on the 25th of December, 1882, a number of persons assembled at the house of Jonathan Wallace for the purpose of dancing, and some of the young men induced plaintiff in error to go to Shetlerville and get a jug of whiskey, one of them furnishing him a horse for that purpose. It was understood that Hogg should contribute thirty cents of the price paid for the liquor, and the others the residue. The liquor was accordingly obtained and the jug placed in a barn, where the contributors to the purchase money and their friends partook of the contents. The whiskey was apportioned to some extent in proportions consonant with the several sums paid by the several parties. Prior to its procurement, some of the young men paid their contributions, and others agreed they would contribute certain amounts, while still others were not parties to the arrangement until after the liquor had been brought to the barn. The witnesses all state they put in their money to help pay for the whiskey.

The thirteenth section of the Dram Shop act provides that the giving away of intoxicating liquors, or other shift or device to evade the provisions of the act, shall be held to be an unlawful selling. The statute is a wholesome police regulation, and should receive a fair and liberal construction, and be strictly enforced, with an eye to preventing all evasions and subterfuges and making it potent and efficacious in its application to all cases plainly within the mischief intended to be cured. At the same time, it is to be interpreted according to its true intent and meaning; and a thing within the intention is within the statute, though not within the letter; and a thing within the letter is not within the statute unless within the intention.

There is no testimony to show, or tending to show, a want of good faith on the part of plaintiff in error, or that any shift or device to evade the law was intended.

In substance he was not a vendor of the liquor, but was an agent, acting on behalf of himself and the other contributors to the purchasing fund, for the purpose of procuring the whiskey for his and their use and consumption. The legal relationship that existed between the contributors and him, was that of principals and agent, and not that of vendees and vendor. The circumstance that at the time of the procurement of the liquor some of the proposed principals had not been asctertained. we do not regard of controlling influence.

Our conclusion is that plaintiff in error is not guilty under the indictment; and the judgment of the county court is reversed.

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Supreme Court of Pennsylvania.

PEIRCE *vs.* BLACK.

In Error to Court of Common Pleas of Chester County.

A judgment as between the parties may be kept alive, although once paid, for the purpose of securing another loan.

As against subsequent lien creditors a mortgage or judgment once paid cannot be kept alive.

Opinion by Paxon, J., March 10, 1884.

We are of opinion that the evidence rejected by the court below should have been admitted. The object of it was to show that at the time the defendant paid the judgment he requested the plaintiff not to satisfy it, that he wanted to borrow more money on it, and that it would save expense if satisfaction were not entered; that the plaintiff assented to this and handed the prothonotary's certificate of the entry of the judgment to the defendant, who kept it about six months, then returned it to the plaintiff and obtained another loan of $200 from him upon the security of the same judgment. It is undoubtedly true that, as against subsequent lien creditors, a mortgage or judgment once paid cannot be kept alive. Anderson v. Neff, 11 S. & R., 207; Craft v. Webster, 4 Rawle, 255. So where a mortgage is given to secure future advances the agreement to advance must appear on the face of the instrument. Irwin v. Tabbs, 17 S. & R. 413. No question as to subsequent creditors arises in this case. We have no doubt that it is competent for the parties to a judgment by their own agreement to change the purpose for which it was held. Thus in Shenk's Appeal, 9 Casey, 371, where a judgment had been confessed in favor of a firm to secure future advances, it may, on the withdrawal of one of its members, by agreement of the parties, remain a valid security in the hands of the remaining partners, and I am unable to see any reason why, in the case of an agreement between a judgment debtor and his creditor, that certain payments shall be applied to the judgments the parties may not subsequently agree otherwise, and apply the payments to some other account. No one but a subsequent lien creditor can be heard to complain of this. It would be inequitable to allow the debtor to do so after his judgment creditor has acted upon it at his request. Thus in Mitchell v. Coombs, 15 Norris, 430, where it was attempted to hold a mortgage of $1,000 as security for future discounts, after it had been paid by the mortgagor, with an agreement or understanding on his part that it might be so held by the bank, this court held that it could not be done as against other creditors. At the same time it was said by Justice Gordon, at p. 434: As to Coombs, his acquiescence in this arrangement would no doubt prevent him from setting up the payment of the bond to defeat the mortgage, but as to his judgment creditors the transaction was of no legal force. While this remark was used by way of illustration the force of it is obvious. In the case in hand, the defendant did not desire satisfaction of the judgment when it was paid. He intended to keep it alive for the purpose of obtaining a further loan, and in fact did obtain $200 from the plaintiff upon the security of the judgment. While this arrangement is of no legal force as to creditors it is good between the parties. It was a valid contract between parties capable of contracting, and we are clearly of opinion the defendant is estopped from alleging the contrary. The plaintiff has advanced his money upon the faith of it, and common honesty requires that the defendant shall be held to his agreement. Modes' Appeal, 6 W. & S., 280, and a number of cases cited for the defendant have no application. They were instances where an attempt had been made to keep a lien alive as against third parties; it is admitted this cannot be done. None of them decides that an agreement to keep a lien alive may not be enforced between the parties where one of them has advanced his money upon the faith of such agreement.

Judgment reversed and a venire facias de novo awarded.

Interest on Costs.

A point of practice of some considerable interest to suitors is the question from what date the costs of an action bear interest. There is no doubt that the old equity rule was, that the interest ran, not from the date of the judgment, but from that of the certificate of taxation. (See Seton, last edit., p. 130.) At common law the matter was not quite so clear, and there were decisions which went to show that the date from which the interest ran was the date of the judgment. In Schroeder v. Cleugh (46 L. J., 365, C. P.; 35 L. T. Rep., N. S., 850), however, the question was considered by three judges of the Common Pleas Division, after the Judicature Acts had come into operation, and they decided in favor of the old equity rule. So the matter stood when the case of Hyman v. Burt (76 L. T., 425, W. N., 1884, p. 100) came before Mr. Justice Field in chambers, and he decided in favor of the right date being the date of the judgment. Lastly, the same point come up again before Mr. Justice Pearson, in Landowners West of England, &c., Company, v.

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Ashford, on the 30th of October, and the learned judge seemed inclined to decide in the contrary sense to Mr. Justice Field, but, on being told that the decision of Mr. Justice Field was supported by one of Mr. Justice Chitty, in Re The Atlantic Mutual Fire Insurance Company v. Huth, on the 21st Dec., 1883, Mr. Justice Pearson felt himself obliged to follow those authorities, which, he said, were too strong for him. It appears, however, that Atlantic, &c., Company v. Huth, was not a decision at all upon the date from which the interest ran, but upon the question whether, on the facts of the case, any interest at all ought to be paid on the costs or not. The point that the interest ought to run from the date of the judgment does not appear to have been argued or suggested, and Mr. Justice Chitty is stated to have said that interest ran by statute from the date of the certificate, and that the usual 4 per cent. interest must be paid from that date. But for the reference to Atlantic, &c., Company v. Huth, it seems very probable that the decision of Mr. Justice Pearson would have been in accordance with that in Schroeder v. Cleugh, so that, so far from the point being now a settled one, as would appear at first sight to be the case, it must be regarded as more doubtful than ever, and in an eminently fit condition for the handling of the Court of Appeal.—*London Law Times.*

The Convertibility of Property Held for Life.

The comments we made at some length several years ago on the inconvenience resulting from the inalienability of specific property held in trust, or held by a life tenant awaiting the time when the limitation over should take effect, were followed by the act of 1882, p. 342, c. 275, empowering the Supreme Court, upon notice to the beneficiaries of a trust, to authorize the trustee to mortgage. This provision, beside enabling a trustee to raise funds when necessary for the beneficiaries or other purposes of the trust, indirectly opened the door to a sale by foreclosure ultimately, where the property could not be advantageously carried.

The English statute of the same year (Settled Land Act, 1882, sec. 37), goes much further and provides the power to sell real or personal property, notwithstanding it is held by a tenant for life, if the court, upon application and in view of all the circumstances, grants leave to make the sale; it being provided, however, that the proceeds shall stand in place of the property and impressed with the same trust or tenancy.

There are two very distinct questions on this subject of the policy of allowing restrictions on alienation, questions which, however, have been generally confounded, much to public inconvenience and disadvantage. One of the mischiefs of prohibiting alienation is that which relates to the consequent unmarketable and unimprovable condition of specific property. Lots remain vacant and buildings become dilapidated, because the division of interest and the incapacity of parties precludes sale. Another and entirely distinct disadvantage is that the fund or pecuniary interest of the beneficiary is kept from the ordinary course of law, in the way of liability to creditors or use in trade. These two elements are entirely distinct. Our statute indirectly and the English statute very freely are calculated to put an end to the first class of difficulties by rendering specific property alienable, without interfering in the least with the second class of questions, namely, the inalienability of the fund.

The question of the Duke of Marlborough's pictures puts in a very strong light the extent to which the English statute has gone. The Duke was tenant for life of an estate, including one of the noblest collections of great paintings in existence. He applied for leave to sell a fraction—said to be a small fraction in proportion to the whole—but valued at about two million dollars. It was objected that the object of the statute was to release from inalienability land and other property having a practical value by reason of use; and that in the case of heir-looms, such as it was claimed these pictures were, the intention of the settlor who creates a life estate in them, with remainder over, must be deemed to be to perpetuate the retention of the specific property; but the court granted the application notwithstanding.—*N. Y. Daily Register.*

The Naturalization of Mariners.

Judge Blodgett, of the Superior Civil Court of Massachusetts, recently decided in the case of Mr. Edward Chase, of East Boston, that section 2166 of the Revised Statutes of the United States, which provides "that any alien of the age of 21 years and upwards, who has enlisted or may enlist in the armies of the United States, either the regular or volunteer forces, and has been, or may be hereafter, honorably discharged, shall be admitted to become a citizen of the United States upon his petition, without any previous declaration of his intention to become such, and shall not be required to prove more than one year's residence within the United States previous to his application to become such citizen," applies to sailors who served in the navy as well

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as to soldiers. This decision of Judge Blodgett is of particular interest, inasmuch as it is directly contrary to that given by Judge Colt October 18. Judge Colt ruled that the petitioner Chase, having served in the navy and not in the army of the United States, was not entitled to the benefits of the act, which applied only to soldiers who had served in the army. Judge Blodgett, on the other hand, after a careful consideration of the case, gave it as his opinion that the word "armies" as used in the act was intended to include the sea as well as the land forces, and accordingly granted the petition. Both the language of the act, and the circumstances attending its passage, would seem to indicate that Judge Blodgett's view of the case is the correct one, although there are in different States written opinions in support of both opinions. It would be well if the matter were taken to a court of last resort and a uniform practice for all the States established.—*Boston Daily Law Record.*

Chas. Walter, Washington, D. C.

NOTES OF RECENT DECISIONS.

Real Estate Agent: Authority to Sell; Estoppel upon Owner.—An owner having entrusted his property with a real estate agent to be sold at a certain price, "within a short time," no more distinct reference as to time being made, may not thereafter refuse to execute a deed after sale on the ground that the property had enhanced in value. [Smith v. Fairchild; Sup. Court of Col., Oct. 1, 1884. 4 Pac. Rep., 757.]

Malicious Prosecution: Termination; Nol. Pros.—A simple *nol. pros.* is not such a determination of an indictment as will entitle the accused to maintain an action for malicious prosecution. [Garing v. Fraser; S. J. C. Maine, Feb. 23, 1884.]

Master and Servant: Fellow-Servants; Inspectors and Brakemen.—Inspectors of cars in the yards of the company and brakemen on its trains are to be regarded as fellow-servants engaged in a common service. [Little Miami R. R. Co. v. Fitzpatrick; Sup. Court of Ohio, Oct. 28, 1884. 6 Ohio L. J. Rep., 115.]

Attorney at Law: Suspension and Removal from the Bar; Unprofessional Conduct.—An attorney at law who publicly, and without cause, charges a court with bribery, is guilty of such a violation of his professional duties as to justify his suspension and removal from the bar, both by the common law and under the statutes of this territory. [*In re* Brown; Sup. Court of Wyoming, Nov. 1, 1884. 4 Pac. Rep., 495.]

Promissory Note: Condition as to Payment; Indorsement of Performance; Discharge of Surety.—Where the payment of a promissory note is conditioned upon the performance by the payee of a written agreement of even date therewith, an indorsement by the maker on such after its delivery, and without the consent of a surety, that the payee has complied with the condition, is not such a material alteration as will discharge the surety. [Jackson v. Boyles; Sup. Court of Iowa. 20 N. W. Rep., 746.]

Homestead: Insane Widow; Waiver by Guardian.—The guardian of an insane widow has no power to waive the homestead rights of his ward. Such rights are personal, and can only be waived by the widow herself. [Ratcliff v. Davis; Sup. Court of Iowa, Oct. 9, 1884. 20 N. W. Rep., 763.]

Courts: Judgment; Amendment after Term.—Courts have very limited discretionary powers to vacate or amend their judgments at a term subsequent to the rendition thereof. In the absence of statute, judgments regularly entered are beyond the court's control after the term has expired. [Exchange Bk. v. Streeter; Sup. Court of Col., April 1, 1884. 4 Pac. Rep., 746.]

The Courts.

SUPREME COURT OF THE DISTRICT OF COLUMBIA.

GENERAL TERM.

Dec 29, 1884

The United States v. B. F. Bigelow. Judgment below affirmed.

Central National Bank v. Hume. Money in court decreed to defendant, with premium specially to administrator.

Hetzel v. B. & O. R. R. Co. Argument continued.

Dec. 30, 1884.

Central National Bank v. Hume Decree submitted.

Hetzel v. B & O. R. R. Co. Argument resumed.

Application of Henry S. Matthews for admission to the bar. Referred to the board of examiners.

IN EQUITY.—New Suits.

Dec 27, 1884.

9258. John Riggles et al. v. Hanna Erney et. al. To restrain, &c., Defts sol, E. B. Hay.

Dec 29, 1884.

9259. Mark W. Samuel v. Benjamin Lawrence et al. To confirm appointment of trustee. Com sol, I. Williamson.

Dec. 30, 1884.

9260. Wm. C. Tolson v. Robert D. Ruffin et al. Acct., and sale Com sol, H. T Wiswall.

9261. George L. Sheriff et al. v. Laura E. Brown et al. To construe will of Andrew Rothwell,

9262 The B & P. R. R. Co v. James B. Edmonds et al. To restrain interference with laying sidings. &c. Com sol, E. Totten.

9263. The W. & G. R. R. Co. v. The District of Columbia. To annul certain tax. Com sol, same.

9264. Margaret Foley v. John Foley. Divorce and Injunction. Com sol, J. Ambler Smith.

Dec. 31, 1884.

9265 Anna L. Reed v. Wm. D. Reed. For divorce. Com sol, Thomas F. Miller.

Jan. 2, 1885.

9266. Jackson Yates v. The B. & P. R. R. Co. Injunction, Com sol, C. P. Culver.

9267. Mary Furmage et al. v Jane R. Furmage et al. Sale of real estate. Com sol, I. B. Linton

9268. Hazel Marion v. Chas. H. Marion. For divorce. Com sol, E. B. Hay.

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Jan. 3, 1885.

9269. Margaret L. Tayloe et al. v. Eugenia P. Warren et al. To sell, &c. Com sol, W. T. Snyder.

9270. J. B. Swett et al v Edward W. McCormick et al. To administer trust for benefit of creditors Com sols, Edwards & Barnard.

CIRCUIT COURT.—New Suits at Law.

Dec. 27, 1884.

25863. Christiana Ehrmantraut v. Everett J. Ellis. Plea of title. Piffs atty, F. W. Jones.

Dec. 29, 1884.

25864. Walter F. Noland v. Josephine Fant. Certiorari. Defts attys, F. W. Jones. Crittenden & Mackey.

25865. I. Thomas Probey v Herman A. Seligson. Certiorari. Piffs atty, S. A. Cox. Defts atty, F. W. Jones.

Dec. 30, 1884.

25866. Henry K. Willard v. Mary L. C. Wood. Damages, $10,000. Piffs atty, E. Totten.

Dec. 31, 1884.

25867. John H. Shannon v. Maud Duval. Damages, $10,000. Piffs atty, Chas Pelham.

Jan. 2, 1885.

25868. Moses Solomon v. Silas H. Mitchell. Acct., rent, $50. Piffs attys, Birney & Birney.

25869. George R. Willis v. George A. Shehan. Note, $1,000. Piffs attys, Hine & Thomas.

Jan. 3, 1885.

25870 Charles Walter v. Thomas J. Brady et al. Note $500 Piffs atty, Chas. A. Walter.

25871. Charles L. Hine v. Richard McAllister, jr. Piffs atty, Chas, L. Hine.

PROBATE COURT.—Justice James.

Dec. 19, 1884,

Estate of Theresa Ebeling; will admitted to probate.

Estate of Susan Rickey; will admitted to probate.

Estate of Chas D. Gilmore; order of publication.

Estate of George Derwan; rule against administrator raised.

Estate of Henry Dyer; will admitted to probate.

Estate of Joe Cross; order of final ratification.

Estate of Patrick Cooney; order to file account and show cause.

Estate of George W. Riggs; order directing executor of Lawrason Riggs, dec'd, to turn over to administrator all personal property of George W. Riggs.

Estate of James H. Ball; final notice issued.

Estate of Pierre Celestin Garres. Nathaniel Wilson appointed administrator.

Estate of James Compton; public sale of personal property ordered.

Estate of James Allen; will admitted to probate; bond, $700.

Estate of George Derwan; rule issued against administratrix.

Estate of Wm. Whisler; will probated and letters testamentory to A. W. Greely; bond. $2,800.

Estate of David C. Ralston; will admitted to probate and letters testamentary to David Brainard; bond, $4,000.

Estate of Hannah E Maupin; will admitted to probate

Estate of Maurice N. Grossman; order authorizing administrator to accept offer of widow to purchase personal effects for $500.

David Pratt, guardian: cause dismissed without prejudice.

Estate of Hart L. Strasburger: first and final account passed.

Estate of Samuel Stott; account and distribution

Estate of Samuel Stover;; second and final account.

Dec 26, 1884.

Estate of Elizabeth Long; final notice issued to executor appointing Friday, January 23, for settlement.

Estate of John Taylor: petition of Robert Gray for rule on administrator to show cause why his letters of administion should not be revoked and order issued on administrator to show cause, rule returnable January 2, 1885.

Estate of Mattie Lathrop; will proved.

Dec. 27, 1884.

Estate of Wm. H. Rich; inventory of personal estate returned by administrator, $6,288 58.

Estate of Daniel Green; assent of Mary Phelps to grant letters filed.

Jan. 2, 1885.

Estate of John Taylor; answer of administrator and rule continued unril Friday next.

Estate of Esther A. Stott; will filed for probate and petition of Frank T. Browning for letters testamentary.

Estate of Wm. Middleton; will filed for probate.

Estte of Sarah P. Copeland; petition of Edwin B. Hay for letters of administration and order granting same; boed, $5,000.

Estate of Ann E. Thamas; order admitting will to probate and granting letters af administration to W. C. Barrett; bond. $1,000.

Legal Notices.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Davis Richards, late of the United States of America, decd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of December, 1884.

CALDERON CARLISLE,
1 Administrator.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Mattie Lathrop, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of December, 1884.

1 HENRY M. BAKER, Executor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 2, 1885.

In the matter of the Will of Esther Ann Stott, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Frank T. Browning.

All persons interested are hereby notified to appear in this court on Friday, the 30th day of January next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WALTER S. COX. Justice.
Test: 1-3 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. December 29, 1884.

In the matter of the Estate of Catharine Robinson, late of Washington City, D. C., deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Michael Boyland.

All persons interested are hereby notified to appear in this court on Friday, the 23d day of January next, at 10 o'clock a. m., to show cause why Letters of Administration, on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.
Test: 1 H. J. RAMSDELL, Register of Wills.
H. B. MOULTON, Solicitor

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 30th day of December, 1884.

REUBEN B. CLARK vs. FRANK D. GUNNELL. } No. 25,409 At Law.

On motion of the plaintiff, by Messrs. Hine & Thomas, his attorneys, it is ordered that the defendant, Frank D. Gunnel, cause his appearance to be entered herein on or before the first rule day, occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 1-3 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 2d day of January, 1885.

HAZEL MARION v. CHARLES H. MARION. } No. 9268. Eq. Docket 24.

On motion of the plaintiff, by Mr. E. B. Hay, her solicitor, it is ordered that the defendant, Charles H. Marion, cause his appearance to be entered herein on or before the first rule day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice, &c.
A true copy. Test: 1-3 R. J. MEIGS, Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

FRANK L BEACH v. COLUMBUS BEACH ET AL. } No. 8464. Eq. Doc. 22.

William W. Boarman, trustee, having reported to the court that on the 30th day of December, A. D 1884, he sold to F. Bernheimer part of Sub-lot 19 in Square No. 265, fronting on 14th street southwest twenty (20) feet and running back thirty nine (39) feet four (4) inches at and for the sum of $305:

It is by the court this 2d day of January A. D. 1885, ordered, adjudged and decreed that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 3d day of February, A D. 1885; provided a copy of this order be published once a week for three successive weeks prior to said last-mentioned date in the "Washington Law Reporter."

W. S. COX, Justice.
A true copy. Test: 1 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, this 31st day of December, 1884.

JAMES B. HOUSTON v. MARY T. GARLAND ET AL. } In Equity, No. 8962.

This cause coming on to be heard upon the supplemental report of the trustees, for the sale of the real estate in the proceedings mentioned, this day filed, it is thereupon and upon consideration thereof, this 31st day of December, 1884:

Ordered, That the offer to purchase Lots five and six in Square forty-two at private sale at and for the price of fifteen hundred dollars cash, as reported by said trustees be and the same is hereby accepted: and that the said sale be and the same is hereby ratified unless cause to the contrary be shown on or before the 31st day of January, 1885; provided a copy of this order be published in the Washington Law Reporter once in each of three successive weeks before said date.

The report states the amount of sales to be $1500.

W. S. COX, Justice, &c.
A true copy.. Test: 1 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

ALEXANDER ET AL. v. BOULDIN ET AL. AND BOULDIN ET AL v. BARNACLO. } Nos. 1054 and 5701. Eq Docs. 8 and 17.

This cause coming on this 31st day of December, 1884, upon the trustee's report of sale filed in the cause, and upon consideration thereof, it is hereby ordered and adjudged that the sale to James S. Nash of part of Lot 2 in subdivision of A. Bouldin, in Square 525, be and is hereby ratified and confirmed, unless cause to the contrary be shown on or before the first day of February, 1885; provided a copy hereof be published once a week for three weeks.

By the Court. W. S COX, Justice.
True copy. Test: 1 R. J. MEIGS, Clerk, &c.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, this 2d day of January, 1885.

HENRY FETTER v. JOHN BUCHANAN ET AL. } In Equity, No. 9017.

This cause coming on to be heard upon the report of the trustee of the sale made by him of the real estate in said cause mentioned, it is thereupon this 2d day of January, 1885:

Ordered, That said sale be and the same is hereby ratified and confirmed unless cause to the contrary be shown on or before the 2d day of February, 1885; provided a copy of this order be published in the Washington Law Reporter once in each of three successive weeks before said day.

The report states the amount of sales to be $1125.

W. S. COX, Justice.
True copy. Test: 1 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John Taylor, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of December, 1884.

EMANUEL M. HEWLETT, Administrator.
52

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath, obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John T. Pickett, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 29th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of November 1884.

50-3 THEODORE JOHN PICKETT, Adm'r. 2142 Pa. Ave,

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. December 19, 1884.

In the matter of the Estate of Charles D. Gilmore, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament of said deceased and for Letters of Administration c. t. a., on the Estate of the said deceased to be granted to Samuel R Bond, has this day been made by Mary J. Gilmore, the Executrix named in said will.

All persons interested are hereby notified to appear in this court on Friday, the 16th day of January 1885 next, at 11 o'clock, a. m, to show cause why the said will should not be proved and admitted to Probate, and Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WALTER S. COX, Justice.
Test: 51 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

LOUISA RILEY, Guardian, Complainant, vs. JOHN W. RILEY ET AL., Defendants. } In Equity. No. 9178. Doc. 24.

On consideration of the report of Louisa Riley, the trustee herein, this day filed, it is this 17th day of December A. D. 1884, ordered, that the sale of the undivided ninth interest in the part of Lot numbered Two (2) in Square numbered Fifty-four (54) in Washington City in the District of Columbia, made by said Trustee, being the first parcel of land described in the decree in this cause, and also in the Fifth paragraph of the bill, to Mary Anna Riley for $233 cash; and the sale of the undivided ninth interest of the part of said Lot Two (2) in said Square Fifty-four (54), made by said Trustee, being the third parcel of land described in the said decree, and also in the seventh paragraph of the bill, to Florence C. Radcliffe for $255 cash; and the sale of the undivided ninth interest in parts of Lots numbered Three (3), Fourteen (14) and Fifteen (15) in Square numbered Two hundred and eighty nine (289), in Washington City aforesaid, made by said Trustee, being the fourth and last parcel of land described in said decree, and in the eighth paragraph of the bill, to said Florence C. Radcliffe, for $2.222 cash; and the sale of the undivided ninth interest in the parcels of land in Georgetown, in the District aforesaid, made by said trustee, being the second parcel of land described in the said decree, and in the sixth paragraph of the bill, to Mary Anna Riley, for $1,111 cash: be and the same are hereby ratified and confirmed unless cause to the contrary thereof be shown on or before the 19th day of January, A. D. 1885; Provided that before that day the said purchasers herein named shall comply with the terms of sale, and that a copy of this order be published once a week in each of three successive weeks in the Washigton Law Reporter before said last mentioned day.

(Signed.) W. S. COX, Justice.
A true copy. Test: 51 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 10th day of December, 1884.

JOHN CUMBERLAND ET AL. v. THOMAS CUMBERLAND ET AL. } No. 9081. Eq. Doc. 24.

On motion of the plaintiffs, by Mr. J. G. Bigelow, their solicitor, it is ordered that the defendants, Emma and Alice Serrin, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default

By the Court. W. S. COX, Justice.
A true copy. Test: 50-3 R. J. MEIGS, Clerk.

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Legal Notices.

THE ANNUAL MEETING OF THE STOCKHOLDERS of the M. Lu Mining Co , will be held on Tuesday, January 13th, 1885, at 7:30 p. m., at the office of the Company, 516 A St. S. E.

52-3* A. P. STEWARD, Secretary.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. December 26, 1884.

In the matter of the Estate of Margaret Waters, late of Georgetown, D. C., deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Collins Crusor

All persons interested are hereby notified to appear in this court on Friday, the 23d day of January next, at 11 o'clock a. m., to show cause why the said Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

By the Court. W. S. COX, Justice.

Test: 52-3 H. J. RAMSDELL, Register of Wills.

GORDON & GORDON, Solicitors.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Wm. E. Moran, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 20th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of December, 1884.

ALBERT M READ.

52-3 941 MASS. AVENUE.

THIS IS TO GIVE NOTICE,

That the subscriber, of Baltimore City, Md., hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Lawrason Riggs, late of Baltimore, Maryland, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of December next; they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 5th day of December, 1884.

LAWRASON RIGGS,
32 Cathedral St.,

CALDERON CARLISLE, Solicitor. 52 Baltimore, Md.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, December 26, 1884

In the case of John Cassels, Executor of Elizabeth W. Long dec'd, the Admistrator aforesaid has, with the approval of the court, appointed Friday, the 23d day of January, A D. 1885, at 11 o'clock a. m , for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 52 H J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphaos' Court Business December 19 1884.

In the case of Joseph J. Waters, administrator of James H. Ball, deceased, the administrator aforesaid has, with the approval of the court, appointed Friday, the 30th day of January, A. D. 1885, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 52 H. J. RAMSDELL Register of Wills

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 27th day of December, 1884.

MARY J. MONROE vs. JAMES MONROE. } No. 9255. Equity.

On motion of the plaintiff, by Mr. C. H. Bramhall, her solicitor, it is ordered that the defendant, James Monroe, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.

A true copy. Test: 52-3 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 23d day of December, 1884.

GEORGE H. WASHINGTON vs. MARY WASHINGTON. } No. 9253.

On motion of the plaintiff, by Messrs. Gordon & Gordon, his solicitors, it is ordered that the defendant, Mary Washington, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Asso. Justice.

True copy. Test: 52-3 R. J. MEIGS, Clerk

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 24th day of December, 1884.

MARY G. BARTLETT, Plaintiff, vs. THOMAS A. LITTLEFORD, And the unknown HEIRS, if any, of HAMILTON HUGHES, dec'd, Defendants. } In Equity. No. 9246.

On motion of the plaintiff, by Mr. E. B Briggs, her solicitor, it is ordered that the defendants, the unknown heirs, if any, of Hamilton Hughes, deceased cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.

A true copy. Test: 52 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 22d day of December, 1884.

JAMES B. HOUSTON vs. MARY T. GARLAND ET AL. } In Equity, No. 8982.

This cause coming on to be heard upon the report of the trustees of the sales made by them, it is thereupon, upon consideration thereof, this 22d day of December, 1884, ordered, that the sales made and reported by James H. Saville and John F. Cox, trustees for the sale of the real estate of John H Houston, deceased, be and the same are hereby ratified unless cause to the contrary be shown on or before the 23d day of January, 1885, Provided a copy of so much of this order as relates to said sales, be published in the Washington Law Reporter once in each of three successive weeks before said 23d January, 1885.

The report states the amount of sales to be $7,139.40.

W. S. COX, Justice

A true copy. Test: 52 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Wm. H. Rich, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of December next: they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day of December, 1884.

ADELAIDE V. RICH.

W. W. BOARMAN, Sol'r. 51 Administratrix.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Catharine Rossiter, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of December 1884.

EDMUND J. LYNCH.

J. J. WILMARTH, Solicitor, 51 Administrator.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

ARTHUR ROONEY & Co.
v.
THE UNKNOWN HEIRS OF MARGARET HARVEY, deceased. } Equity, No. 8838.

It is this 17th day of December, 1884, ordered by the court that the sale this day reported by the trustee in this cause, be ratified and confirmed unless cause to the contrary be shown on or before January 17th, 1885.

Provided a copy of this order be inserted in the Washington Law Reporter once in each of three successive weeks before said day.

W. S. COX, Justice.

A true copy. Test: 51-3 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

WILLIAM LORD
v.
PATRICK O'DONNOGHUE ET AL. } Equity. No. 8429.

Allen A. Dale and Th. Jesup Miller, Trustees, under a deed of trust mentioned in these proceedings, having reported a sale of part of sub-lot No 26, original Lot No. 8, in Square No. 518, in the City of Washington, to D. A. Behrend for $3,575. It is this eleventh day of December, A. D., 1884, ordered that said sale be confirmed unless cause to the contrary be shown on or before the 10th day of January, A. D. 1885; Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous said day.

By the Court. W. S. COX, Justice.

A true copy. Test: 50 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business December 12, 1884.

In the case of Robert S. Chew, administrator of Mary G. Harris, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 16th day of January A. D. 1885, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them; Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test; 50 H. J. RAMSDELL, Register of Wills.

HANNA & JOHNSTON, Solicitors. 50

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Holding a Special Term for Orphans' Court Business. December 10th, 1884

In the case of Henry C. Craig, Administrator of William H. Craig, deceased, the administrator aforesaid has, with the approval of the Court, appointed Friday, the 2d day of January A. D. 1885, at 11 o'clock a. m, for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

Test: H. J. RAMSDELL, Register of Wills.

WM. D. CASSIN, Solicitor. 50-3

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

W. RILEY DEEBLE ET AL.
v.
WILLIAM LUNSFORD ET AL. } No. 9030. Eq. Docket 24.

It is, this 9th day of December, A. D. 1884, ordered by the Court, that the sale of the real estate made on the 25th day of November, 1884, by J Holdsworth Gordon, trustee, in this cause and duly reported to the court, be and the same is hereby ratified and confirmed unless cause to the contrary thereof be shown on or before the 10th day of January, A. D., 1885; Provided a copy of this order be inserted in the Washington Law Reporter, a newspaper printed and published in the City of Washington, D. C., once in each of three successive weeks, previous to said day.

The report states the amount of sale to be $1,860

W. S. COX, Justice.

A true copy. Test: 50-3 R. J. MEIGS, Clerk.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of George Dunn, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of December, 1884.

50 3 SUSANNA C. DUNN.

JNO. PAUL JONES, R. B. LINES, Solicitors. Adm'x

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of George McDougall, late of Indianapolis, Indiana, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of December, 1884.

50 3 JOHN PAUL JONES Administrator.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Catharine Riggles late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of December, 1884.

CHAS. A. ERNEY, Administrator.

E. B. HAY, Solicitor. 50-3

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Albert G. Eldredge, late of the District of Colnmbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of December, 1884.

NANCY Y. ELDREDGE Ex'x.

WM. H, DENNIS, Solicitor. 50-3

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Mary A. T. Quincy late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of December, 1884.

LOUISA MATTINGLY. Ex'x.

W. R. WOODWARD, Solicitor. 50-3

THIS IS TO GIVE NOTICE

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Richard L. Thompson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of December next; they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 12th day of December, 1884.

WILLIAM H. WETZEL, Adm'r.
2131 H St., N. W.

H. R. WEBB, Sol'r. 50-3

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Washington Law Reporter

WASHINGTON - - - - - - January 10, 1885.

GEORGE B. CORKHILL - - - EDITOR

Medical Quacking.

Whatever puts a check on medical quacking is to the advantage of humanity, and therefore we note with pleasure a recent decision of the Supreme Judicial Court of Massachusetts in the case of The Commonwealth against Franklin Pierce. The defendant, decorously described in the opinion as "an irregular medical practitioner," betng called, or volunteering, to treat Mrs. Mary A. Bemis, with her consent wrapped her in flannel saturated in kerosene oil, continuing this heroic practice for some two or three days and until she died. The doctor was indicted for manslaughter and convicted thereof at the last May term of the superior court at Worcester. It was contended for the defendant that the act itself was not unlawful, and that there was no evil intent, but a good one, in the medication, that the doctor merely made a mistake through ignorance, and the authority of the Supreme Court in a former case was cited, to the effect that to constitute manslaughter "the killing must have been the consequence of some unlawful act." The trial court, in passing upon the question, said: "It is not necessary to show an evil intent; if by gross and willful negligence the defendant caused the death, he is guilty of culpable homicide. The question is, whether the kerosene, if it was the cause of the death either in its original application, renewal or continuance, was applied as the result of foolhardy presumption or gross negligence by the defendant. A man is not to be convicted of manslaughter merely because of his ignorance. His ignorance is only important as bearing upon the questfon whether his conduct in the care and treatment of the patient was marked by foolhardy presumption or gross and reckless carelessness. The defendant in this case is to be tried by no other standard of skill or learning than that which he necessarily assumed in treating the deceased; that is, that he was able to do so without gross recklessness or foolhardy presumption in undertaking it. The government must show not only merely the absence of ordinary care, but a gross carelessness amounting to recklessness." The Supreme Court sustained the conviction and approved this ruling. Here from Germany comes an account of a late case where a physician was held liable for negligence under these circumstances: A servant who received a wound in the chest in April last, died from *septicœmia* under the care of this doctor, who despising antiseptic dressings, treated his patient according to ancient usages. The court held that every medical practitioner should keep himself informed on the accomplished progress of science, and have an exact knowledge of modern systems of treatment. If these had been employed the patient's life might have been saved. Hence the liability for negligence. The Court of Appeals sustained the judgment. —*Insurance.*

LORD CAMPBELL says: "In the list of our great magistrates there is no name more venerated than Hale. . . . His qualifications as a judge always shone with lustre in proportion as the occasion called forth their display. . . . He was not ouly above the suspicion of corruption or undue influence, but he was never led astray by ill-temper, impatience, haste, or a desire to excite admiration." Sir Samuel Shepherd mentions him as "the most learned man that ever adorned the bench."

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Supreme Court District of Columbia

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY

GEORGE L. SHERWOOD AND JANE SHERWOOD.

vs.

THE DISTRICT OF COLUMBIA

AT LAW. No.

Decided March 10, 1884.
The CHIEF JUSTICE and Justices COX and JAMES sitting.

The District authorities had covered a well located on the public highway and in which was placed a pump for the use of the public, with a wooden platform, and upon this was laid a brick pavement even with the level of the sidewalk. Plaintiff had frequently used the pump and there was nothing to lead one to suspect any danger or defect about it. On the day in question, while in the act of using the pump the pavement over the platform suddenly gave way precipitating plaintiff to the bottom of the well. It was in evidence that the District authorities had not for nine years made any examination or repair of the platform. By the court below it was held that express notice must be brought home to the District of the defect in the covering of the well, but it was *Held*, on appeal, that the District was bound to know that the platform was of perishable material, and to watch over it and keep it in repair; that having left it without examination for nine years until it became a man trap, with the assurance to the public of security, there was such delinquency as rendered the District liable in damages.

THE CASE is stated in the opinion.

JOHN RIDOUT and I. WILLIAMSON for plaintiff.

A. G. RIDDLE and FRANCIS MILLER for the District.

Mr. CHIEF JUSTICE CARTTER delivered the opinion of the court.

The plaintiff and his wife bring this action against the District of Columbia to recover damages for injuries received by the wife by reason of her falling into a public well situated on Seventh street in this city. Plaintiff's right to recover is based upon the alleged negligence of the defendant; while the defendant, on the other hand, claims that it is exempt from liability inasmuch as there is no proof that it had any express notice of the defective condition of the well. This defence was sustained by the court below in an instruction to the jury to find for the defendant. And upon that point, viz., the character of the notice required by the District before it can be called upon to respond in damages, the case comes here.

The facts are undisputed and are set forth in a bill of exceptions, which recites as follows:

"Upon the trial of the above entitled cause, the plaintiffs, to maintain the issue on their part joined, gave evidence tending to show that they were husband and wife, and that on September the 6th, 1881, they resided on the west side of Seventh street, between G and H streets S. W., Washington, D. C., where they had been living about eight months. That early in the morning of September 6, 1881, the plaintiff, George L. Sherwood, left home for the Center Market, where he had a stand for the sale of butter and eggs; and, a little later, about six o'clock a. m., Jane M. Sherwood, needing some water for domestic purposes, took a bucket and went to the nearest pump, which was on the west side of Seventh street, between G and H streets S. W., for the purpose of procuring the same. She had frequently been to this pump, going there every day before the accident for the same purpose, and had no notice of any danger or defect about it; there being no depression of the surface except a few of the bricks around the stock were slightly sunken; that the general surface of the sidewalk was level, and there was nothing to lead one to suspect that the pump was out of repair; that the plaintiff, Jane M. Sherwood, went there, not thinking there was any danger in going there. Having hung her bucket on the spout, and being about to pump, the pavement on which she was standing suddenly gave way beneath her, and she fell through to the bottom of the well, which was some 28 or 30 feet deep. She was entirely immersed in the water at the bottom of the well, and having come to the surface got hold of a projection in the stock of the pump to which she clung, until after about twenty minutes her rescue was effected by a colored man, who descended into the well, and arranged a rope around her by means of which she was drawn up and taken out. She was insensible, and was carried bodily to her house and put to bed. It was some two weeks before she recovered from the first effects of the shock and the bruises received; and while before the occurrence she was strong

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and healthy, capable of doing severe work without unusual fatigue, she has since been unable to engage in any domestic duty requiring much exertion without extreme fatigue and prostration. Some time afterwards she began to be troubled with rheumatism—a disease which had not troubled her before. And the plaintiff further gave evidence tending to show that the platform or covering over the well of said pump had been renewed in 1872 or 1873 when Seventh street was improved by the District authorities, and that the platform had not been renewed, repaired or examined from that time to the date of this occurrence, September 6, 1881, and that the portions of the platform which were visible after the occurrence were so decayed as to be mere pulp. And here the plaintiff rested.

Whereupon the defendant, by its counsel, prayed the court to instruct the jury that upon the whole case they should return a verdict for the defendant. And thereupon the court instructed the jury that the plaintiffs were not entitled to recover, because there was no evidence tending to show express notice to the defendant of the defect in the covering of the well, and that there was no evidence that the condition of the footway was such as to charge the defendant with constructive notice of the unsafe condition of the sidewalks. And the court instructed the jury to return a verdict for the defendant. To which ruling, instruction and direction of the court, the plaintiffs, by their counsel, excepted, and prayed the court," &c.

This ruling was maintained by the court below on a motion for a new trial, and the sole question presented us is the correctness of that ruling as applied to the state of facts embodied in the bill of exceptions.

The doctrine is well settled that where statutory provisions do not make the corporation a guarantor of the condition of its highways, that the action must be predicated of negligence on the part of the municipality, and to fix upon it the charge of negligence it must appear that in some way they were advised of the condition of things which brought about the injury.

The history of this Seventh street well runs through a long series of years, and through repeated changes of the government of the District. It was one among a number of wells dug by the corporation of Washington before the building of the aqueduct, and were located throughout the city with reference to the convenience of the population. The government of the District of Columbia, as distinguished from the corporations of Washington, Georgetown and the county, inherited them. In process of time improvements were made in the streets of the city, and a wooden platform was placed over this well, and upon that was laid a brick sidewalk. The undisputed facts in the case show that for a period of nine years the District suffered this wooden platform beneath the sidewalk to remain without reformation or renewal, and without investigation as to its condition. And when, at the end of these nine years, this rotten platform gives way, to the damage of this woman, the District comes into court and says, we have had no notice of this condition of things, no notice of the vice that culminated in the fall of this woman, and therefore ought not to be charged with liability. Another government has invened in the direction of the affairs of the District, and it is owing probably to this change in the personnel of the government that the condition of this well has been overlooked, and not to any personal dereliction on the part of the present officials, nor is it important in the issues of this case to ascertain whether there has been or not. The question is whether we have a corporate delinquency here. Here is a work created by the District, a well dug and excavated in the public highway, with a pump in it, yielding water for domestic purposes. It invites the inhabitants of the neighborhood to go there and get their daily supply. The citizens had no notice of the rotten platform beneath, covered, as it was, by an imperishable brick roof. In using this pump, they had a right to expect that it was devised with a foundation of brick, or material as imperishable. Is the District under the law chargeable with knowledge of the condition of this structure? They put it there and they covered it up: they dug a hole thirty feet deep below it; they put the brick up-

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on the wood with the knowledge that the latter was perishable. They ought to have known that when they laid these wooden structures upon which the sidewalk was subsequently laid, they were laying something certain to decay. And although bound to know that this platform was liable to decay, the District made no examination of it for nine years! Here was a complete man-trap, with the assurance to the public of security. We hold that the knowledge of these facts was all the notice that was required in this case. Where the city constructs a thing of this kind, it becomes their duty to watch over it, to protect the public, or abide the consequences.

Judgment reversed and new trial granted.

Supreme Court of Pennsylvania.

MUHLENBERG'S APPEAL.

Construction of a Will: Vested or Contingent Remainder.—The will was as follows: "All the rents, income and interest arising out of the balance of my estate . . . after first deducting . . . necessary expenses, I direct to be paid to my wife, Ann E. Muhlenberg, semi-annually, by my executors during her natural life, for the support and education of my minor children. After the death of my wife, I direct my executors to sell all my real estate, collect all outstanding moneys, and divide the amounts by giving an equal share to each child or its heirs."

Held, That on the death of the widow the administrator of one of the children who had died before the widow, was entitled to the child's share in the estate, as it was a vested interest.

Appeal from the decree of the Orphans' Court of Lancaster county.

Opinion by GORDON, J. Filed October 1, 1883.

The second of the following two items of the will of Dr. H. E. Muhlenberg, deceased, is that upon which the present controversy turns:

"All the rents, income and interest arising out of the balance of my estate, real, personal and mixed, after first deducting annuities, repairs, taxes, and all other necessary expenses, I direct to be paid to my wife, Ann E. Muhlenberg, semi-annually, by my executors, during her natural life, for the support and education and maintenance of my minor children."

"After the death of my wife, Ann E. Muhlenberg, I direct my executors, or the survivor of them, to sell all my real estate, collect all outstanding moneys, and divide the amounts, by giving an equal share to each child or its heirs."

The widow died in 1881, and Charles P., one of the sons of the testator, died some ten years before his mother, unmarried and intestate. On distribution in the court below the administrator of Charles P. Muhlenberg claimed the bequest as due to the estate of his decedent under the will above mentioned. This claim was resisted by the appellants, who insisted that the legacy was in its character contingent, and so lapsed on the death of the legatee before the widow.

The auditor appointed by the Orphans' Court to make distribution, after a careful investigation, and a very full and able opinion, awarded the controverted fund to the administrator, and in this he was affirmed by the court below, which decreed according to his recommendation. It is wearisome to be compelled to go over the stale and worn out subject of vested and contingent remainders, and this especially when the auditor has left nothing for us to say which is novel even in form. The legacy was of personal property; the direction in the will to sell the realty worked a conversion. I do not understand this to be disputed. Indeed, no such dispute can arise, for if this were a devise of realty no one would doubt that the word heirs operated as a limitation, and there would be no question as to the character of the gift. But notwithstanding the very learned argument of the counsel for the appellants, we cannot see that the question is more difficult of solution because the gift is of personalty. The will makes a final disposition of the estate, or fund, and it is fractional only as to its enjoyment; the widow to have and enjoy the interest for life, and the *corpus* to be distributed among the children, share and share alike, at her death. If these legacies were not vested, we fail to see upon what contingency they were made to depend. The will indicates no contingency of survivorship at the death of Mrs. Muhlenberg; on the other hand, it directs without qualification, that at that period the estate shall be divided among the children. There is here no time or other condition annexed to the substance of the gift, but merely to the time of enjoyment; hence, on all authority the legacy must be treated as vested: McClure's Appeal, 22 P. F. Smith, 414. Provenchere's Appeal, 17 Id., 463, may be regarded as a case in point, and its facts certainly do not more strongly support the principle there decided than do those in the case in hand. Provenchere made a devise in trust to convert real and personal property into money, and to invest, *inter alia*, for the use of his daughter-in-law, Maria Rutgers, during her widowhood, and after her marriage

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or decease, over to his grandchildren; the income to be applied to their maintenance and education, and the capital to be paid to them as they respectively attained the age of twenty-one years. The auditor to whom the case was referred for disposition, held that the interests of the grandchildren were contingent and did not vest until the death of the widow; hence, those only who survived her were entitled to take. But in this he was not sustained either by the court below or by this court. The argument for the appellant was, that as there was no beneficial enjoyment of the fund given to the remaindermen, during the life of the first taker, there was no intention indicated that the legacy should vest before the time fixed for the beneficial enjoyment of the fund. It will be seen that there is here a concession that the principal sum vests immediately on the death of Mrs. Rutgers, though its payment is deferred until the beneficiaries reach the age of twenty-one, and this because of the bequest of the interest or income for their use in the meantime. But Mr. Justice Sharswood, who delivered the opinion of the court, pertinently asks, how it came that the bequest of the very same interest to Mrs. Rutgers for life could prevent the vesting of the fund at the death of the testator. In whom did the fund vest if not in the grandchildren? And the mere fact that the payment of the principal and income were put off until the widow's death did not make the gift contingent. In the case in hand, as already observed, the testator appropriates the whole income of his estate to his wife for life, and on her death he empowers his executors to sell his real estate, collect all outstanding moneys, "and divide the amount by giving an equal share to each child or its heirs." After a direction so plain as this, how can there be doubt that the testator not only intended to dispose, but did dispose of his whole estate; or that at the time of his death his estate should go to his children, their enjoyment thereof being postponed only because there intervened the necessity of providing for the comfort and support of his wife during her life? But then again we have it well established in Pennsylvania, by an unbroken line of decisions, that the word "heirs," when uncontrolled by the expressed intention of the will, has the effect to vest a legacy which would otherwise be contingent. In other words, it is to be taken as a word of limitation, limiting the bequest, in case of the death of the legatee before the time fixed for payments, to his or her representatives. The question is fully discussed in McGill's Appeal, 11 P. F. Smith, 46, and the cases of Patterson v. Hawthorne, 12 S. & R., 112; King v. King, 1 W. & S., 205; Reed v. Buckley, 5 Id., 517; Buckley v. Reed, 3 Harris, 83, and Manderson v. Lukens, 11 Id., 31, were followed and approved. In that case, Mr. Justice Thompson, after calling attention to the fact that the contention was whether the words should be taken as substitutionary only, or as words of limitation, says, "the words in these cases specially adjudicated upon, are identical with those that give rise to the doubt in the case in hand." He then cites Chief Justice Tilghman's question and answer in Patterson v. Hawthorne, "what did the testator mean by the words, 'or their heirs?' I understand it as if he had said, to be paid to such persons as would be entitled to it as their representatives by the law of the country—that is to say, it was not, in the case of the death of one, to go to the survivors, but to be considered as vested in the deceased child." The learned justice then adds, "it is not correct to say that this was an *obiter dictum* on the part of the chief justice. It was the very point in contest, and not whether the husband could have taken under the alternative bequest." We have also the case of Mull v. Smith, 31 P. F. Smith, 393, in which it was held that the additional words, in a bequest, "or their legal heirs," were evidently used, and not to supply a legal succession in the event of the death of any one of the legatees, and meant simply legal representatives. Now, as there is nothing in Dr. Muhlenberg's will which tends to qualify or limit the effect of the word "heirs" following the bequest, even were the question otherwise doubtful, this would, under the authorities cited, determine the character of the legacies, and settle the contention in favor of the appellees.

Appeal dismissed, and decree affirmed at the costs of the appellant.

Voluntary Payment: Illegal Exaction of Taxes; Requisites for Recovery.—To recover money paid to the city under protest, it must be shown that it was involuntarily paid under protest as an unauthorized exaction, and without any understanding that the city should under any circumstances retain the money. [Boswell v. Philadelphia; Sup. Court of Pa., Feb. 4, 1884. 10 Pitts. L. J., 154.]

Tax: Navigation of River; Conflict with United States Laws.—A city cannot make a charge as the price of the privilege of navigating a river in accordance with the terms of the party's license of the United States. [Moran v. New Orleans; U. S. Sup. Court, Nov. 3, 1884. 4 Sup. Ct. Rep., 38.]

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Court of Appeals of Maryland.

McCURLEY *vs.* STOCKBRIDGE.

HANDY *vs.* STOCKBRIDGE.

Suits against administrator for fees due wife's counsel in an action for divorce, the husband dying before decree is rendered; who may maintain such suit; demurrer.—1. Where a wife institutes suit for a divorce, and the husband dies before a decree is rendered, she cannot maintain a suit against the husband's estate for the amount of the fees charged by her counsel in the suit.

2. But where it appears that there was good ground for divorce, the counsel may themselves maintain such suit.

Opinion by Alvey, J.

The question in these cases is raised by demurrer to the declarations. In the one case the widow sues to recover of the administrators of her deceased husband a sum with which to pay counsel fees for prosecuting a suit for divorce from her husband in his lifetime, but which proceeding never reached a decree in consequence of the death of her husband. In the other case the action is by the attorneys themselves to recover of the administrators of the deceased husband, reasonable compensation for services rendered the wife in the divorce suit, as for necessaries supplied to her.

1. As to the action of the wife, we know of no principle upon which it can be maintained. The action is not for alimony that has been awarded to the wife during the lifetime of the husband, nor is it for money paid by the wife to the use of the husband in discharge of an obligation imposed upon him by an order of court. But the claim sued on is for $900, the amount demanded of the plaintiff by her counsel, and which she seeks to recover in her own right that she may be able to meet the demand. It is clear, we think, that whatever implied assumpsit may have arisen on the part of her husband to pay counsel fees for services rendered in the divorce proceedings at the instance of the wife, such implied assumpsit was not raised to the wife, and she can have no right to maintain an action for any such claim. The court below sustained the demurrer to the declaration in this case, and the court fully concurs in that ruling.

2. As to action by the attorneys, that stands upon different principles. The declaration alleges the employment of the plaintiff by the wife; the institution of the proceedings by her for a divorce *a mensa et thoro* from her husband; the prosecution of the suit until the same became abated by the death of the husband, and that the services were necessary and reasonable for the wife, and were rendered during the lifetime of the husband. The facts thus alleged are admitted by the demurrer, and the question is whether there was any implied obligation or assumpsit on the part of the husband to pay for the professional services rendered for and at the instance of the wife.

That a husband is liable for the necessaries supplied to a wife who, without fault or legal provocation, has been compelled to leave, or is justified in leaving him, and live separate and apart from him, is a proposition not disputed. But the question here is whether the services sued for in this case can be regarded as necessaries supplied to the wife and for which she had power to contract on the credit of her husband.

It has long been held that where a wife was turned out of doors, and threatened by her husband, and she employed an attorney to exhibit articles of the peace against him, the husband was liable to the attorney for the payment of his charges; for, as was said by the court, whenever the husband, by his conduct, compels the wife to appeal to the law for protection, she may charge him for the necessary expense of the proceeding as much as for necessary food or raiment; and her solicitor may sue for his proper charges. Shepherd v. Mackoul, 3 Camp., 326; Turner v. Rooks, 10 Ad. & Ell., 47. And so it has been held that the husband's estate was liable for preliminary expenses incidental to a suit for the restitution of conjugal rights instituted by the wife, but before the suit came to a hearing the husband died, and no decree therefor was ever pronounced. Wilson v. Ford, L. R. 3 Exch., 63. In this last case cited, Channell, B., said: "I think that where a suit was instituted, as it was here, for restitution of conjugal rights and for alimony *pendente lite*, the expenses in relation to it were necessary to her as wife, and such as she was justified in incurring." And for costs and expenses necessarily incurred by the wife in filing a petition for judicial separation, although the petition was not proceeded with, it was held that the husband was liable. Rice v. Shepherd, 12 C. B. (N. S.), 322.

In the case of Brown v. Ackroyd, 5 Ell. & B., 819, it was held that the proctor was not entitled to recover his costs for instituting proceedings for a divorce *a mensa et thoro*, because it did not appear that there was reasonable ground for the proceeding—that being necessary to entitle the wife to pledge her husband's credit for the costs of such proceeding—but it was fully conceded and held by the court that if that fact had appeared the husband would have been liable.

And in the case of Stocken v. Patrick, 29 L. T. (N. S.), 507, where it appeared that the

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wife had good ground for instituting a suit for separation because of the cruelty of her husband, and her attorney having brought suit for divorce on the ground of adultery and cruelty, which was compromised by an agreement for a deed of separation, the solicitor was held entitled to sue and recover of the husband for his costs as between attorney and client, including the costs as between attorney and client in the divorce suit.

And so in the recent case of Ottaway v. Hamilton, 3 C. P. Div., 393, on appeal it was held that a solicitor employed by the wife to take proceedings against her husband to obtain a divorce on the ground of cruelty and adultery was entitled to sue and recover of the husband for extra costs; that is, costs reasonably incurred by him beyond the costs taxed, and allowed as between party and party.

In that case Lord Justice Bramwell, in the course of his judgment, put the case we are now considering: "Suppose," said he, "a husband were to die after the petition was filed, but before the decree could be pronounced against him, would not the comnon law liability of his estate for the costs in curred by his wife continue in full force? I therefore think that the power of the wife to pledge the husband's credit remains unimpaired." And in conclusion he said: "Subject to the question whether they (the costs) have been justifiably incurred, the defendant is bound to pay them just as if he had retained the plaintiff to act as his solicitor." But it is a condition of the right to recover that it might be made to appear affirmatively that the suit of the wife against the husband was reasonably and justifiably instituted. Hooper, In re, 2 DeG. J. & S., 91; Brown v. Ackroyd, 5 El. & B., 819.

In this State it has never been otherwise than that the husband has been required to pay the reasonable counsel fees for the services rendered the wife in suits for divorce. The amount allowed has always depended largely upon the circumstances of the case, and the pecuniary resources of the parties. Ricketts v. Ricketts, 4 Gill., 105.

The law upon this subject, as settled in several of the American States, is at variance with that of England; and according to the decisions of the courts of those States this action could not be maintained. But the principle of the English decisions would seem to be more in consonance with our own practice, and we shall therefore follow them. We think the demurrer to the declaration in this case should have been overruled, and we must therefore reverse the judgment.

The judgment in the case of Mrs. McCurley is affirmed, and that in the case of John H. Handy and William T. Roberts is reversed, and the cause remanded.

Spiritual Mediums.

Judge Arnold, of the Court of Quarterly Sessions of Philadelphia county, has rendered an interesting opinion in the somewhat peculiar case of the Commonwealth, ex rel. Henry C. Gordon, and Hugh S. Kerr v. The Keeper of the County Prison. The case was heard upon a petition for a writ of *habeas corpus*. It appeared at the hearing that the petitioners Gordon and Kerr were arrested, charged with the crime of obtaining money by false pretences. Claiming that they were spiritual mediums, they held seances to which they charged an admission fee of $1; and they professed to be able to call up the spirits of the deceased relatives of those who attended the seances. Notwithstanding their caution to allow no one to enter except those who were believers in spiritualism, and friendly to them, yet a newspaper reporter and a confederate gained admission. In the midst of the "materialization" they tripped up the medium, tore off his clothes, and discovered that the person was Gordon, the relator. Around his body were wrapped silken robes, night gowns, chemises, knit shawls, laces, mosquito netting, wigs, moustaches, eyebrows, etc., used by him in the various personations he assumed. A lady who was in the audience, was called as a witness, and said that, being interested in spiritualism and desiring to investigate it, she had paid for her right to be present. She had requested that the spirit of her deceased aunt be called out; and when it came thought she recognized it. She called it by name and asked it if it was the spirit of her aunt, and the figure bowed its head. Even on the witness stand she was not positive that she had not seen her aunt, although she witnessed the exposé, and heard the full developments in court. Following is the opinion of the court:

"I have no doubt on this subject. It has been held in England, under a statute similar to our own, that a defendant falsely pretending that he had power to communicate with the spirits of deceased persons, and that he could cause such spirits to be present in a material form, and play upon musical instruments, made a pretension of existing facts; and that obtaining money on such pretences came within the statute against false pretences. Regina v. Lawrence, 36 Law Times, n. s., 404; Regina v. Giles, 11 Law Times, n. s., 643. Although the fraudulent misrepresentation of an existing fact was accompanied

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by an executory promise to do something at a future period, it was none the less a false pretence. Regina v. West, 8 Cox C. C., 12; Regina v. Jennison, 98 Cox C. C., 158. The lady who testified in this case, paid her money on the faith of the representations of the relators, which proved to be false; and thus we have a clear case of obtaining money by false pretences. The relators are remanded."

An Inkeeper's Liability.

An interesting case concerning an inkeeper's liability for the property of a drunken guest has recently been decided by the Supreme Court of Michigan. The suit was brought by a pedler to recover the value of his valise and goods worth upward of $300, which were stolen at the defendant's hotel after the pedler had put up there for the night. On the trial it appeared that the plaintiff drank freely at the hotel bar and became somewhat intoxicated, on the evening the theft was committed. A point was made of this fact by the counsel for the defendant, who insisted that the liability of his client was lessened by reason of the plaintiff's drunkenness. The trial judge, however, took a very different view, and charged the jury, on the contrary, that the defendant's liability, if there were any difference, was greater. "In fact," he said, "when the goods were once placed in his charge, the fact that the owner of the goods got intoxicated there at the bar of the landlord, if anything, should hold the landlord to strict liability on that account." On appeal, the Supreme Court approved this statement of the law, and upheld the verdict for the plaintiff.—*Boston Law Record.*

THE excessive heat in Paris during the summer months is alleged to have modified all ideas of decorum, even among the members of the bar. At all events, it is related that an advocate presented himself at the Palais de Justice in a black cravat and white trous rs. But the dignity of the court was equal to the occasion. "Sir," severely said the president, "the court invites you to put your trousers round your neck and your cravat on your legs."

VICTORIA HULSKAMP has begun a suit in the Supreme Court, through A. J. Dittenhoefer, as her counsel, against the Hanover National Bank, to recover $1,100 deposited to her credit by her father, Mr. Morosini. After his daughter had eloped with the coachman, Mr. Morosini stopped payment of this money. The plaintiff claims that the money was an absolute gift to her, and that the bank was bound to pay it.

The Statute of Frauds.

The ninth report of the Historical MSS. Commission contains some interesting information as to the various stages through which the Frauds and Perjuries Bill passed before it became the "Act for the Prevention of Frauds and Perjuries," or, according to its more familiar appellation, the Statute of Frauds. It seems that the bill was originally introduced in the session of 1673-4, by Lord Keeper Finch, in whose careful handwriting the draft bill appears to have been. Certainly the corrections are by the Lord Keeper (Report, Part II, p. 45). It was brought in again in 1675, and went into committee, and many alterations and omissions were made. Some of the omissions are well worthy of notice. In the draft bill it was proposed that wills made in time of sickness should be void unless the testator, after the will was made, should live to go about again, and be seen in church or market. We fear the result of this would have caused the premature demise of many testators whom anxious relatives would have taken out of their beds to church and market, or whose own devotion to their families would have made them insist on being carried thither. Also all trusts—and not only trusts of lands—were to be in writing. With regard to wills, Sir Leoline Jenkins offered some articles, and Lord Chief Justice North some additional clauses. Many of these clauses were finally accepted and became part of the act. The bill was dropped in the Commons, but was reintroduced next session, and again in 1676-7, when it was slightly altered in the Lords' Committee and became law (Report, Part II, pp. 48, 49, 66, 69).—*London Law Times.*

Negotiable Instruments.

The Supreme Court of Georgia decided, in the case of the Central Railroad v. First National Bank of Lynchburg, that, where a draft was made payable to the order of the cashier of a bank, and was by him indorsed to the cashier of another bank "for collection, for account of" the first bank, this was nothing more than a warrant of attorney authorizing the indorsee to collect the amount due on the draft for the endorser. It conveyed no title except for that purpose, and was notice to all persons subsequently dealing with it, that the endorser had not parted with the title, or intended to transfer the ownership of the proceeds to another. Where the cashier to whom a draft was thus indorsed, in turn indorsed to a third person "for account of" the second bank, and the person to whom it was then indorsed received the money from the drawees,

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he received that which belonged to the original payee, and this put him in privity with such payee to such an extent that upon failure to pay on demand, an action for money had and received would lie. The reception by one of money which belongs to another, and a demand by that other, makes all the privity necessary to maintain an action for money had and received. The final indorsee making the collection could not apply the amount received to a claim held by him against the bank last endorsing as against the original payee.—*Internal Revenue Record.*

Notes of Cases.

The question as to the precise time when the purchaser under a sheriff's sale acquires his right was before the Supreme Court of Pennsylvania, in Hardenburg v. Beecher. (Pittsburg Legal Journal, July 16, 1884, p. 485.)

The premises sold were oil lands, and the sale was made on the 26th of July. Soon after the sale the defendants in the execution abandoned the property, and the purchasers took possession without waiting for their deed from the sheriff, and at once began to operate the oil wells, and took and stored a quantity of oil. Thereupon, on September second of the same year, the defendants in error, plaintiffs in this action, having had a judgment against the debtors whose land had been sold, issued execution, and levied it upon the oil which they bought in at the sale subsequently had; and on November twenty-seventh of the same year, the deed of the sheriff to the plaintiff in error, Hardenburg, was acknowledged and delivered. The junior creditors, who had bought in the oil, now brought replevin to recover it from the purchasers of the land under the senior execution.

The court held that a sheriff's subsequent acknowledgment and delivery of his deed, like that of a private individual, inures back by relation; and, moreover, that although a sheriff's sale does not wholly divest the debtor's legal ownership until the deed has been acknowledged, yet, if the deed be subsequently acknowledged, the vendee has such inceptive title, by his mere purchase, as will be bound by the lien of a judgment, whilst the debtor has no such title remaining as will support a lien; if, however, the acknowledgment be refused, the vendee's contract is rescinded, and the debtor's title remains as if no sale had been made. The debtor is, however, entitled to possession until the acknowledgment; the purchaser has by his mere purchase acquired no title to the present enjoyment. This right to possession carries with it its attendant advantages; the right to the growing crops as they may mature; the right to an ordinary use of a mine or quarry, or to the flow from an oil well. The debtor will not be allowed to commit waste or destruction of the premises. The sheriff's vendee is therefore only entitled to the growing grain, and to the use of the mine or quarry, and the oil upon the lands embraced within his purchase, subject to the right accruing to the debtor under his possession. The grain, the coal, or the oil, so far as they are of the realty, belong to the vendee; the debtor may, however, pending the sale, and until the acknowledgment of the deed, cut the ripened grain, mine the coal, or receive the flow of oil, and apply the product to his own use; while these products are attached to the realty, they belong to the vendee, and it is by ordinary severance only that they become the property of the debtor. The grain as a growing crop, the coal in the mine, or the oil in the well could not, after the sale of the land, be seized and sold upon execution as the property of the debtor, nor would the debtor be allowed to sell or waste them. But if, before the acknowledgment, the grain ripen and the debtor sever it from the land, if he continue the ordinary work of the mine or operate the oil well, the grain, the coal and the oil, the ordinary products of the land, during the lawful possession of the debtor, are his; these are some of the attendant advantages of his possession. After severance and possession taken by the debtor, these products are, of course, liable to execution for his debts. But if he voluntarily abandon the possession of the land, and surrender to the sheriff's vendee, he loses all these attendant advantages. If the vendee enter under these circumstances, he is lawfully in possession; the subsequent acknowledgment of the deed gives him title, by relation, from the date of the sale, The debtor's right to remain until the sale is fully completed, and to enjoy its incidental advantages as such, are not the subject of execution, nor is he obliged to remain for the benefit of his creditors; the privilege is a personal one, and he may exercise it or not as he chooses.

Accordingly the court held that the purchasers were justified in entering, since the debtors, without fraud, had apandoned possession, and the creditors of the debtor could not complain of their having so done. Judgment for the plaintiff in the replevin was accordingly reversed.

See, on this subject, Aspinwall v. Balch, 4 Abb., N. C., 193; Mitchel v. Bartlett, 51 N. Y., 447, affirming 52 Barb., 319; Stimson v. Arnold, 5 Abb., N. C., 377; Mut. Life Ins. Co. v.

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Balch, 4 Abb., N. C., 200, 203; Same v. Bigler, 7 N. Y., 568.

An interesting point in the law of water-courses involving indirectly, perhaps, a principle which sometimes arises under the Statute of Limitations, was presented in the case of Kensit v. Great Eastern Railway Co. (32 W. R., 885, affirming 31 W. R., 603; 23 Ch. D., 566), where it appeared that a riparian proprietor granted to a person not a riparian proprietor a license to abstract water from the stream by a pipe inserted in the stream in the licensor's lands. The water was returned to the stream undiminished in quantity and unpolluted in quality, at a point six feet distant from the point of withdrawal.

Held, 1. That an action by a lower riparian proprietor to restrain this user by injunction could not be maintained. 2. That it was not necessary for the licensee to show that no injury could ever by any possibility accrue to the plaintiff; but that if the user were at any time varied so as to cause injury, the right of action would then arise.

On the second point, the judges expressed themselves very briefly, Baggallay, L. J., simply saying if at any future time he (the defendant) changes his course, and either reduces the quantity of water abstracted or pollutes that which he returns into the stream, then, no doubt, from the point of view which I take, a right of action would arise, but it would arise only when that act is done, and no continuance for twenty years, or any other period of the present user, would in any way prejudice the plaintiff in respect of the rights he would have if any such future interference with his rights was attempted.

Compare, to the same effect, Arnold v. Hudson River R. R. Co. (55 N. Y., 661, reversing 49 Barb., 108); also Ludlow v. Hudson River R. R. Co. (6 Lans., 128), where the right of action for caving in plaintiff's land by an excavation which was not a trespass at the time of making it, was held to occur at the time of caving in, not at the time of the excavation.

NOTES OF RECENT DECISIONS.

Deed: Grant with all Privileges; Boom.—Where one, owning the right of fastening a boom to the shore of an adjoining owner, and exercising that right in connection with his booms along his own shore, conveys his land, "together with all the booms and piers thereon and privileges thereto appertaining, as heretofore used by me," the right of fastening the boom as enjoyed by the grantor passes to the grantee. [Hoskin v. Brown; S. J. C. Me., Mar. 4, 1884.]

Criminal Law: Larceny; Obtaining Property by False Pretext.—Under an ordinary indictment for theft, a conviction may be had on proof showing that the taking, though with the owner's consent, was obtained by false pretext, or with intent to deprive the owner of the value of the property and to appropriate it to the benefit of the taker. [Morrison v. State; Court of Appeals of Texas, Oct. 25, 1884. 4 Tex. L. Rev., 280.]

Railroads: Stop-over Tickets; Negligence of Conductor; Damages.—A passenger who, through the negligence of one conductor is not furnished with a stop-over ticket to which he is entitled, and who, on attempting to resume his journey after a stop, is required by a second conductor to pay additional fare or leave the train, may elect to leave train, and in that case may recover from the railroad company not merely the amount of the additional fare which he is subsequently obliged to pay in order to reach his destination, but all damages sustained by him as the direct and natural consequence of the fault of the first conductor. [Yorton v. M., L. S. & W. R. Co.; Sup. Court of Wis., Nov. 25, 1884.]

Partnership: Confession of Judgment by Partner in Favor of Firm.—One partner may become the debtor of a firm of which he is a member, and he may lawfully secure such debt in the same manner that he can secure any other creditor. His confession of judgment in favor of the firm for such debt, if made *bona fide*, is good against subsequent lien creditors. [Ziegler v. Hardwick; Sup. Court of Penn., April 14, 1884. 41 Legal Intel., 338.]

Will: Bequest to "My Wife;" Former Wife Living; Probate.—Testator separated from his wife, and went through the ceremony of marriage with another woman, with whom he lived for many years as his wife. By his will he made her his residuary legatee as "my wife." The first wife was still alive. *Held*, that the second wife was the person intended, and grant of probate made to her as residuary legatee. [Howe's Goods; Eng. H. Court, Prob. Div. 48 J. P., 743.]

Railroad: Obstruction of Surface Water.—As a general rule the obstruction of the flow of mere surface water from land by the construction of a railroad, does not constitute a cause of action in favor of the land owner. [Hanlin v. C. & N. W. R. Co.; Sup. Ct. Wis., Nov. 25, 1884.]

Landlord and Tenant: Ejectment; Breach of Covenant; Waiver.—Where a lease contains a covenant that the lease shall be for-

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feited if the tenant sublets the premises, and the landlord knowing that the tenant has sublet signs the lease, *held*, that the signing indicated an intention on the part of the landlord to waive his right of forfeiture. [Carson v. Wood; S. C. Vict., Oct. 1, 1884. 6 Aust. L. T. (N. C.), 92.]

Deed: Delivery after Death of Grantor.—A deed for land will not convey the legal title, unless it is delivered by the grantor in his lifetime. A delivery through the mail by a third person after the death of the grantor is not sufficient. [Otto v. Doty; Sup. Court of Iowa, April 18, 1883.]

Sunday Law: Frightening Horses on Sunday.—In an action against a private citizen for leaving an obstacle in the road whereby plaintiff's horse has been frightened and caused injury, the defendant cannot set up as a defense the fact that the plaintiff was at the time travelling on the highway for pleasure on Sunday. [Piollett v. Suniners; Sup. Ct. Pa., Oct 6, 1884. 15 W. N. C., 241.]

Extradition: Right of Asylum to Fugitive from Justice.—A fugitive from justice has no asylum in a foreign country when he is guilty of an offense for which he is liable or subject to extradition, by treaty between this and the foreign government. If he is illegally and forcibly removed from such foreign country, that country alone has couse of complaint, and he cannot complain for it. [Kew v. People; Sup. Court of Ill., Sept. 3, 1883.]

Landlord and Tenant: Eviction; Disposession of Part of Premises by Landlord.—D. rented a house from W., and W. became a boarder and lodger with D. W. being dissatisfied with the boarding was ordered to leave; he refused, saying that he was owner of the house and would not leave, but would retain the room he then occupied, but would leave as a boarder. *Held*, that the retaining of the room under these circumstance was not an eviction. [Diehl v. Woods; Sup. Court of Pa., Nov. 10, 1884. 15 Pitts. L. J., 152.]

Tort: Placing Objects on Street; Frightening Horses; Liability.—A property owner who has a lawful right to expose an object on or along a public highway within view of passing horses, for a temporary purpose, is bound only to take care that it shall not be calculated to frighten ordinary gentle and well-trained horses. He is not bound to guard against frightening skittish, vicious, timid and easily frightened horses. [Piollet v. Suniners; Sup. Court of Penn., Oct. 6, 1884. 15 W. N. C., 241.]

Contract: Construction.—Where two men exchange property, and the one agrees to pay the other $500 if the title to the property given by the former fails, and the latter agrees to the former "the full amount for which said property may, at any time be sold by him or his agents over the sum of $1,500 and up to $2,000," the former is entitled to $500 if he produces a *bona fide* purchaser who is willing to give $2,000 therefor, though the latter refuses to sell. [Tureman v. Stephens; Sup. Court of Mo., Dec. 8, 1884.]

Municipal Corporations: Personal Injuries; Velocipede.—It cannot be said as a matter of law that a velocipede on a sidewalk is in an unlawful place, and, therefore, that a person who is obliged to step aside to let it pass, and who by such stepping aside falls into a hole, a defect in the highway, cannot recover. [Purple v. Greenfield; S. J. C. Mass. 1 Daily L. Rec., No. 42.]

Practice: Ca. Sa.; Embezzlement; Action Ex Contractu.—Where a plaintiff waives the tort and sues by action in form *ex contractu* to recover money wrongfully converted to his own use by defendant, and the record shows that a tort has been actually committed, he is entitled, under the Illinois statute, to a *ca. sa.*, or execution against the body of defendant, notwithstanding the form of action adopted. [Barney v. Chapman; U. S. C. C. N. D. Ill., Oct., 1884; 21 Fed. Rep., 903.]

Sale: False Representations; Concealing Indebtedness.—A applied to the plaintiff to purchase goods on credit, and was requested to state "how he stood." In response he stated that he had $3,000 in his business, consisting of merchandise and book accounts, and had $300 in cash. On the strength of this statement he obtained goods on credit. He did not state that he owed $2,100 at the time. *Held*, not to be a mere passive non-disclosure; that having undertaken to answer the inquiry, a partial statement of the truth was calculated to mislead and convey false impressions. [Newell v. Randall; Sup. Court of Minn., June, 1884. 18 Rep., 344.]

Practice: Directing Verdict; Negligence.—When, in an action for personal injuries caused by defendant's negligence, upon the whole testimony the court will not feel justified in sustaining a verdict for the plaintiff, it should direct a verdict for the defendant; and that, although there may be some evidence which would raise a possibility or a suspicion that the plaintiff was entitled to recover. [Sullivan v. Crysolite Co.; U. S. C. C. D. Col., Oct. 16, 1884. 21 Fed. Rep., 892.]

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The Courts.

United States Supreme Court.

JAN. 6. 1885.

George A. Black, of New York city, was admitted to practice.

No. 640. William H. Henderson, executor, etc., plaintiff in error, v. H. Estelle Wadsworth.

No. 641. Howard L. Henderson v. same.

No. 642. William H. Henderson v. same.

No. 643. Warren N. Henderson v. same.

No. 644. Victoria S. McCarthy v. same.

No. 855. John T. Cardwell v. The American River Bridge Company; submitted under twentieth rule.

No. 936. John V. Weaver et al. v. Spencer Field, sr., et al; submitted under twentieth rule.

No. 7. Original. Ex parte, in the matter of Clinton B. Fisk, petitioner. Leave granted to file petition for writ of habeas corpus, and cause argued by Mr. Wheeler H. Peckham for petitioner, and by Mr. John R. Dos Passos for respondent.

No. 141. The Electric Railroad Signal Company et al. v. Hall Railway Signal Company; argued.

JAN. 8, 1885.

J. C. Cooke, of Newton, Ia., and John Hallum, of Lonoke, Ark., were admitted to practice.

No. 741. William M. Fisher et al. v. William Kelsey et al.; order of publication granted.

No. 974. Henry Amy et al. v. The Taxing District of Shelby county et al.; submitted under twentieth rule.

No. 1149. Joseph W. Dyer et al. v. The National Steam Navigation Company; assigned for January 19, after No. 844.

No. 129. John R. Moffit, appellant, v. Samuel B. Rodgers et al.; decree reversed with costs per stipulation, and cause remanded to be proceeded in according to law and justice.

No. 145. George W. Wilson et al. v. Duncan McBane; order of continuance heretofore entered stricken out and case dismissed with costs pursuant to tenth rule.

No. 146. James H. Chadwick et al. v. The United States; argued.

Nos. 147 and 148. Lydia M. Fussell v. Daniel Gregg et al.; Lydia M. Fussell v. E. S. Hughes et al.; argument commenced.

No. 1118. The Wabash, St. Louis and Paciffc Railway Company v. Benj. F. Ham et al.; submitted under twentieth rule.

No. 1247. Henry G. Bicknell v. Sprague Comstock; submitted under twentieth rule.

Jan. 9, 1884.

W. J. Whitehouse, of Pottsville, Pa.; Burr W. Jones, of Madison, Wis.; James H. Budd, of Stockton, Cal., were admitted to practice.

No. 247. William Grant v. Henry Y. Attrill. Dismissed with costs.

No. 24. L. R. Tucker v. Frank Masser. Submitted under twentieth rule.

No. 749. Francis W. Boyer v. Daniel Boyer et al., Comm'rs, &c. Same.

No. 851. The Board of County Canvassers of the County of Anderson v. Thos. P. Beal. Same.

No. 860. The Nashville, Chattanooga and St. L. R. R. Co. v. The U. S. Same.

No. 1011. Dennis Looney v. The District of Columbia. Same.

No. 1012. The Provident Institution for Savings in Jersey City v. The Mayor, &c., of Jersey City. Same.

No. 1083. The Mayor, &c., of the City of Quincy v. The United States, ex rel. Peter A. H. Jackson. Same.

No. 1090. The United States v. Charles L. Steever. Same.

No. 1148. Cheong Ah Moy v. The United States. Same.

No. 1157. Frederick Prentice v. Orzord P. Stone. Same.

No. 1180. The City of Litchfield v. George W. Ballow et als. Same.

No. 147. Lydia M. Fussell v. Daniel Gregg et al. and

No. 148. Lydia M. Fussell v. E. S. Hughes et al. Argument concluded.

No. 149. Harvey D. Kitchell v. The City of Chicago. Dismissed with costs per stipulation.

No. 150. David L. Magruder v. The City of Chicago. Continued by agreement.

No. 151. Henry Allerton v. The City of Chicago. Dismissed with costs pursuant to tenth rule.

No. 152. Thomas W. Edwards et al. v. Franklin Farrell; continued.

No. 153. Isaac N. Pearce et al. v. Charles J. Hain; submitted.

No. 154. Edward B. Chase, plaintiff in error, v. Abijah Cuths et al.; argued.

No. 156. Francis Dodge et al. v. Thomas Knowles; submitted.

No. 157. D. H. Payne et al., etc., v. W. W. Moore, etc.; passed for settlement.

John L. Hill, of New York city; Gustavus H. Wald and Mortimer Matthews, of Cincinnati, and Alexander P. Hodges, of New York city, were admitted to practice.

No. 130. T. H. Davison et al., etc., v. George A. Von Lingen et al., etc.; decree affirmed with costs. Opinion by Mr. Justice Blatchford.

No. 950. William H. Streeper et al. v. The Victor Sewing Machine Company.

No. 951. Rhoda Murphy, administratrix, etc., v. The Victor Sewing Machine Company; decrees affirmed with costs. Opinion by Mr. Justice Blatchford.

No. 865. William O. Cole v. The City of La Grange. Opinion by Mr. Justice Gray.

No. 75. Samuel Head v. The Amoskeag Manufacturing Company; judgment affirmed with costs. Opinion by Mr. Justice Gray. Mr. Chief Justice Waite and Mr. Justice Blatchford did not sit in this case.

No. 19. The Liverpool, New York and Philadelphia Steamship Company v. The Commissioners of Emigration; judgment reversed with costs and cause remanded with directions to award a new trial. Opinion by Mr. Justice Malthews.

No. 76. David F. Hollister, Collector of Internal Revenue v. The Benedict & Burnham Manufacturing Company; decree reversed with costs and cause remanded with directions to enter a decree dismissing the bill. Opinion by Mr. Justice Matthews.

No. 520. The St. Paul and Duluth Railroad Company v. The United States; appeal from the Court of Claims; judgment affirmed. Opinion by Mr. Justice Matthews.

No. 521. The Flint and Pere Marquette Railroad Company v. The United States; appeal from the Court of Claims; judgment affirmed. Opinion by Mr. Justice Matthews.

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No. 135. Samuel A. Peugh v. Richard H. Porter et al.; appeal from the Supreme Court of the District of Columbia; decree reversed with costs and cause remanded with directions to render a decree in conformity with the opinion of this court. Opinion by Mr. Justice Matthews.

No. 118. Solomon Halferty, plaintiff in error, v. Herman Wilmerding; judgment reversed with costs and cause remanded to the Circuit Court of the United States for the Southern District of Iowa, with directions to award a new trial. Opinion by Mr. Justice Matthews.

No. 866. The Town of Martenton v. J. H. Fairbanks.

No. 867. The Town of Sheldon v. C. W. Day; and

No. 868. The Town of Sheldon v. J. H. Fairbanks; judgments affirmed with costs and interest. Opinion by Mr. Justice Woods.

No. 132. John S. Rowell et al. v. Edmund J. Lindsay et al.; decree affirmed with costs. Opinion by Mr. Justice Woods.

No. 31. The Central Railroad and Banking Company of Georgia et al, appellants, v. Edmund W. Pettus et al., etc.; decree reversed and cause remanded with directions to modify the decree so as to award to appellees only the sum of $17,580, with interest from March 7, 1881, with the lien established by the decree; each party to pay the costs in this court, including one-half each of the cost of printing the record. Opinion by Mr. Justice Harlan.

SUPREME COURT OF THE DISTRICT OF COLUMBIA.

GENERAL TERM.

Jan. 5, 1885.

Louis Gachet v. C. W. M. Hubbell, constable Rule returnable Monday next.

James E Cook and Neil Drummond admitted to the bar.

John D. Smith and Frank J. White. Application for admission to the bar.

Carrick v. Teller. Order for substitution of petition.

Central National Bank v. Hume et al. Final decree.

Jan. 6, 1885.

Hetzel v. B. & O. R. R. Co. Argued.

Jan. 7, 1885.

Gibbons v. District of Columbia. Argument resumed.

Jan. 8, 1885.

Same. Argued and submitted.

Edmonds & Son v. Gilbert. Partially heard.

Jan. 9, 1885.

Same. Argued and submitted.

District of Columbia, use of Cooper, v. Van Horn et al. Argued and submitted.

IN EQUITY.—New Suits.

Jan. 5, 1885.

9271. John Foley v. Margaret F. Foley. Injunction. Com sol. H. W. Garnett Defts sol, J. Ambler Smith.

9272. Nichol Main v. Florence I. Main. For divorce. Com sol, C. C. Cole.

9273. Benjamin Beall et al. v. Willie Williams et al. Creditor's bill. Com sols, Edwards & Barnard.

Jan. 6, 1885.

9274 Gardiner G. Hubbard v. Gertrude H. Grossman et al. Creditor's bill. Com sol. H. W. Garnett.

Jan. 7, 1885.

9275. Christian Ruppert v. George A. Haske et al. To reform description of lot. Com sols, Hanna & Johnston.

9276 Virginia A. Golibart v. Walter Z. Golibart. For divorce.

9277 The National Bank of the Republic v. William C. Adams. To annul conveyance. Com sol, R. K. Elliot.

9278. Thomas Findley v. Mary S. Findley. For divorce. Com sols, Carusi & Miller.

Jan. 8, 1885.

9279 William W. Metcalf v Annie Arrison et al. Judg't, creditor's bill. Com sols, Hine & Thomas.

Jan. 9, 1885.

9280. Wm. Wilson v. Dennis Brawner et al. For partition. Com sols, Smith & Warrick.

9281. Mark W. Samuel v. B. H Warner et al. So substitute trustee. Com sol, E. H. Thomas.

9282. George Taylor v. John F. Cook et al. Injunction. Com sol N Wilson.

9283 Margaret A Larman v. Herman Larman. For divorce Com sol, Wm. A. Cook.

CIRCUIT COURT.—New Suits at Law.

Jan. 3, 1885

25872 Bertha Hammond et al. v. Sidney I. Walles. Notes, &c. Piffs attys, Davidge and Newman.

Jan. 5, 1885.

25873. Louisa V. Jackson v. Mary A. S. Cary. Note, $110. Piffs atty, A. B. Williams.

Jan. 6, 1885.

25874 Owen G. Staples v. James A. Powlett Acct., $762 20 Piffs atty, M. F. Morris. Defts atty, C. E. Creecy.

25875. Elson T. Wright v. George H Levis. Acct., $3886. Piffs atty, W. K Duhamel.

25876 Frank L. Campbell v. same. Acct., $1250. Piffs atty, same.

25877. George W. Utermehle v. Henry W. Rheam. Ejectment. Piffs attys, Davidge and Carrington.

Jan. 8, 1885.

25878. Patterson, Renshaw & Co. v. Jacob Sanger. Notes, $460 93. Piffs attys, Birney & Birney.

25879 The United States, ex rel. L. H. Pike, v. Robert D. Hunter. Acct., $4000. Piffs atty, L H Pike.

25880. C. W. Thorn & Co. v. Emma J. Gooch. Acct., $317.04. Piffs attys, Edwards & Barnard.

25881. George W. Utermehle v. I. Fletcher Skidmore. Ejectment. Piffs atty, J McD. Carrington.

25882. Samuel O. McDowell v. Joseph W. Jackson. Notes, $384.20. Piffs attys, Turner and Riddle, Davis & Padgett.

Jan. 9, 1885.

25883 John T. Varnell & Son v. Leon Schell. Notes and acct. $1076 96. Piffs atty, C C. Lancaster.

25884 Chas. H Raymond v. Augustus S. Nicholson. Note, $813.92. Piffs atty, same.

25885 W. S Hodge v. Margaret A. Thyson et al. Judg't of Justice Helmick, $77.87.

PROBATE COURT.—Justice James.

Jan. 7, 1884.

Estate of John M. Myers; final notice issued to administrators, appointing January 30, 1885, for settlement.

Estate of John Casey: petition of Samuel Beiber for letters af administration filed.

Jan. 9, 1885.

Estate of Robert Powell; final notice issued.

Estate of John Taylor; affidavits issued.

Estate of John Casey; order of publication issued.

Estate of Esther A. Stott; will fully proven.

Estate of Geo. A. Morrison; receipts in full of legatee filed.

Estate of Ellen M. Senter; letters of administration issued to Stephen Senter.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 6th day of January, 1885.

NICHOL MAIN
v. } No. 9272. Eq. Doc. 24.
FLORENCE IRENE MAIN.

On motion of the plaintiff, by Mr. C. C. Cole, his solicitor, an affidavit of a disinterested witness having been filed that the defendant has been absent from the District of Columbia for more than six months, and one summons against her having been returned "not to be found" it is ordered that the said defendant do cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. W. S COX. Justice.

A true copy. Test: 2-3 R. J. MEIGS, Clerk

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business January 9th, 1885.

In the matter of the Estate of John Casey, late of the District of Columbia deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Samuel Bieber, a creditor.

All persons interested are hereby notified to appear in this court on Friday, the 30th day of January, next, at 12 o'clock m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

W. S. COX, Justice.

Test: 2-3 H. J. RAMSDELL, Register of Wills.

LEON TOBRINER, Solicitor.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

THEODORE A. MILLS ET AL. v. SUSAN E MILLS ET AL. } 9042. Eq. Doc. 24.

Talmadge A. Lambert, Sidney T. Thomas and Charles C. Cole, heretofore appointed as trustees in this cause, having, reported that on the 4th day of December, 1884, they sold, in conformity with the decree heretofore made in this cause directing the same, lot numbered one on the plat of the estate of the Clark Mills, filed in said cause, for the sum of two thousand nine hundred and fifty dollars ($2,950), it is, this 6th day of January, 1885, ordered that said sale stand finally ratified and confirmed unless cause be shown against the same on or before the 6th day of February, 1885. Provided a copy of this order be published for three successive weeks prior to said day in the Washington Law Reporter

By the Court. W. S. COX, Justice.
A true copy. Test: 2 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business. January 7, 1885.

In the case of Mary H. Myers and Martin F. Morris, administrators of John J. Myers, dec'd, the Administrators aforesaid have, with the approval of the court, appointed Friday, the 30th day of January A. D. 1885, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrators will take the benefit of the law against them; Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test; 2 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 9, 1885.

In the case of Hosea B Moulton, Adm'r of George William Thompson deceased, the administrator aforesaid has, with the approval of the Court, appointed Friday, the 6th day of February A. D 1885 at 11 o'clock a. m, for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

Test: 2 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Holding a Special Term for Orphans Court Business. January 9th, 1885

In the case of Francis H. Stickney, administrator of Robert J. Powell, deceased, the Adm'r aforesaid has, with the approval of the court, appointed Friday, the 30th day of January, A. D. 1885, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 2-3 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 10th day of January 6th, 1884.

TAYLOE ET AL. v. WARREN ET AL. } No. 9269. Eq. Doc. 24.

On motion of the plaintiffs, by Mr. Wm. Tayloe Snyder, their solicitor, it is ordered that the defendants, Eugenia Phœbe Warren and George B Warren, her husband, Mary Calmes Perry, Thornton Tayloe Perry, Edward Tayloe Perry. Estelle Tayloe Paine John Paine, and Ogle Tayloe Paine, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default

By the Court. W. S. COX, Justice.
A true copy. Test: 2-3 R. J. MEIGS, Clerk.

Legal Notices.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Davis Richards, late of the United States of America, decd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of December, 1884.

CALDERON CARLISLE,
1 Administrator.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Mattie Lathrop, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of December, 1884.

1 HENRY M. BAKER, Executor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 2, 1885.

In the matter of the Will of Esther Ann Stott, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Frank T. Browning.

All persons interested are hereby notified to appear in this court on Friday, the 30th day of January next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WALTER S. COX. Justice.
Test: 1-3 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. December 29, 1884.

In the matter of the Estate of Catharine Robinson, late of Washington City, D. C., deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Michael Boyland.

All persons interested are hereby notified to appear in this court on Friday, the 23d day of January next, at 10 o'clock a. m., to show cause why Letters of Administration, on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.
Test: 1 H. J. RAMSDELL, Register of Wills.
H. B. MOULTON, Solicitor

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 30th day of December, 1884.

REUBEN B. CLARK vs. FRANK D. GUNNELL. } No. 25,409 At Law.

On motion of the plaintiff, by Messrs. Hine & Thomas, his attorneys, it is ordered that the defendant, Frank D. Gunnel, cause his appearance to be entered herein on or before the first rule day, occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 1-3 R J MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 2d day of January, 1885.

HAZEL MARION v. CHARLES H. MARION. } No. 9268. Eq. Docket 24.

On motion of the plaintiff, by Mr. E. B. Hay, her solicitor, it is ordered that the defendant, Charles H. Marion, cause his appearance to be entered herein on or before the first rule day occuring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice, &c.
A true copy. Test: 1-3 R. J. MEIGS, Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

FRANK L BEACH v. COLUMBUS BEACH ET AL. } No. 8464. Eq Doc. 22.

William W. Boarman, trustee, having reported to the court that on the 30th day of December, A. D 1884, he sold to F. Bernheimer part of Sub-lot 19 in Square No. 265, fronting on 14th street southwest twenty (20) feet and running back thirty nine (39) feet four (4) inches at and for the sum of $305:

It is by the court this 2d day of January A. D. 1885, ordered, adjudged and decreed that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 3d day of February, A D. 1885; provided a copy of this order be published once a week for three successive weeks prior to said last-mentioned date in the "Washington Law Reporter."

W. S. COX, Justice.
A true copy. Test: 1 R. J. MEIGS, Clerk

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, this 31st day of December, 1884.

JAMES B. HOUSTON v. MARY T. GARLAND ET AL. } In Equity, No. 8982.

This cause coming on to be heard upon the supplemental report of the trustees, for the sale of the real estate in the proceedings mentioned, this day filed, it is thereupon and upon consideration thereof, this 31st day of December, 1884:

Ordered, That the offer to purchase Lots five and six in Square forty-two at private sale at and for the price of fifteen hundred dollars cash, as reported by said trustees be and the same is hereby accepted: and that the said sale be and the same is hereby ratified unless cause to the contrary be shown on or before the 31st day of January, 1885; provided a copy of this order be published in the Washington Law Reporter once in each of three successive weeks before said date.

The report states the amount of sales to be $1500.

W. S. COX, Justice, &c.
A true copy.. Test: 1 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

ALEXANDER ET AL. v. BOULDIN ET AL. AND BOULDIN ET AL v. BARNACLO. } Nos 1054 and 5701 Eq Docs. 8 and 17.

This cause coming on this 31st day of December, 1884, upon the trustee's report of sale filed in the cause, and upon consideration thereof, it is hereby ordered and adjudged that the sale to James S. Nash of part of Lot 2 in subdivision of A Bouldin, in Square 525, be and is hereby ratified and confirmed, unless cause to the contrary be shown on or before the first day of February, 1885; provided a copy hereof be published once a week for three weeks

By the Court. W. S COX, Justice.
True copy. Test: 1 R J. MEIGS, Clerk, &c.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, this 2d day of January, 1885

HENRY FETTER v. JOHN BUCHANAN ET AL. } In Equity, No. 9017.

This cause coming on to be heard upon the report of the trustee of the sale made by him of the real estate in said cause mentioned, it is thereupon this 2d day of January, 1885:

Ordered, That said sale be and the same is hereby ratified and confirmed unless cause to the contrary be shown on or before the 2d day of February, 1885; provided a copy of this order be published in the Washington Law Reporter once in each of three successive weeks before said day.

The report states the amount of sales to be $1125.

W. S. COX, Justice.
True copy. Test: 1 R. J MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John Taylor, late of the District of Columbia, dec'd

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of December, 1884.

EMANUEL M. HEWLETT, Administrator.
52

Legal Notices.

THIS IS TO GIVE NOTICE.

That thesubscriber of the District of Columbia, hath, obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John T. Pickett, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 29th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of November 1884.

50-3 THEODORE JOHN PICKETT, Adm'r. 2142 Pa. Ave,

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. December 19, 1884.

In the matter of the Estate of Charles D. Gilmore, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament of said deceased and for Letters of Administration c t. a., on the Estate of the said deceased to be granted to Samuel R Bond, has this day been made by Mary J. Gilmore, the Executrix named in said will.

All persons interested are hereby notified to appear in this court on Friday, the 16th day of January 1885 next, at 11 o'clock, a. m, to show cause why the said will should not be proved and admitted to Probate, and Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WALTER S. COX, Justice.
Test 51 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

LOUISA RILEY, Guardian, Complainant, vs JOHN W. RILEY ET AL., Defendants. } In Equity. No. 9178. Doc. 24.

On consideration of the report of Louisa Riley, the trustee herein, this day filed, it is this 17th day of December A. D. 1884, ordered, that the sale of the undivided ninth interest in the part of Lot numbered Two (2) in Square numbered Fifty-four (54) in Washington City in the District of Columbia, made by said Trustee, being the first parcel of land described in the decree in this cause, and also in the Fifth paragraph of the bill, to Mary Anna Riley for $233 cash; and the sale of the undivided ninth interest of the part of said Lot Two (2) in said Square Fifty-four (54), made by said Trustee, being the third parcel of land described in the said decree, and also in the seventh paragraph of the bill, to Florence C. Radcliffe for $255 cash; and the sale of the undivided ninth interest in parts of Lots numbered Three (3), Fourteen (14) and Fifteen (15) in Square numbered Two hundred and eighty nine (289), in Washington City aforesaid, made by said Trustee, being the fourth and last parcel of land described in said decree, and in the eighth paragraph of the bill, to said Florence C. Radcliffe, for $2.222 cash; and the sale of the undivided ninth interest in the parcels of land in Georgetown, in the District aforesaid, made by said trustee, being the second parcel of land described in the said decree, and in the sixth paragraph of the bill, to Mary Anna Riley, for $1,111 cash: be and the same are hereby ratified and confirmed unless cause to the contrary thereof be shown on or before the 19th day of January, A. D 1885; Provided that before that day the said purchasers herein named shall comply with the terms of sale and that a copy of this order be published once a week in each of three successive weeks in the Washington Law Reporter before said last mentioned day.

(Signed.) W. S. COX, Justice.
A true copy. Test 51 R. J MEIGS, Clerk

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

ARTHUR ROONEY & Co. v. THE UNKNOWN HEIRS OF MARGARET HARVEY deceased. } Equity, No. 8838.

It is this 17th day of December, 1884, ordered by the court that the sale this day reported by the trustee in this cause, be ratified and confirmed unless cause to the contrary be shown on or before January 17th, 1885

Provided a copy of this order be inserted in the Washington Law Reporter once in each of three successive weeks before said day.

W. S. COX, Justice.
A true copy. Test: 51-3 R. J. MEIGS, Clerk.

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Legal Notices.

THE ANNUAL MEETING OF THE STOCKHOLDERS of the M. Lu Mining Co., will be helu on Tuesday, January 13th, 1885, at 7:30 p. m., at the office of the Company, 516 A St. S. E.

52-3* A. P. STEWARD, Secretary.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. December 26, 1884.

In the matter of the Estate of Margaret Waters, late of Georgetown, D. C., deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Collins Crusor

All persons interested are hereby notified to appear in this court on Friday, the 23d day of January next, at 11 o'clock a. m., to show cause why the said Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

By the Court. W. S. COX, Justice.

Test: 52-3 H. J. RAMSDELL, Register of Wills.

GORDON & GORDON, Solicitors.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Wm. E. Moran, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 20th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of December. 1884.

ALBERT M READ.

52-3 941 MASS. AVENUE.

THIS IS TO GIVE NOTICE.

That the subscriber, of Baltimore City. Md, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Lawrason Riggs, late of Baltimore, Maryland, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of December, 1884.

LAWRASON RIGGS,
82 Cathedral St,

CALDERON CARLISLE, Solicitor. 52 Baltimore, Md.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, December 26, 1884.

In the case of John Cassels, Executor of Elizabeth W. Long dec'd, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 23d day of January, A. D. 1885, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 52 H J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphaos' Court Business December 19 1884.

In the case of Joseph J. Waters, administrator of James H. Ball, deceased, the administrator aforesaid has, with the approval of the court, appointed Friday, the 30th day of January, A. D. 1885, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 52 H. J. RAMSDELL Register of Wills.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 27th day of December, 1884.

MARY J. MONROE vs. JAMES MONROE. } No. 9255. Equity.

On motion of the plaintiff, by Mr. C. H. Bramhall, her solicitor, it is ordered that the defendant, James Monroe, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.

A true copy. Test: 52 3 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 23d day of December, 1884.

GEORGE H. WASHINGTON vs. MARY WASHINGTON. } No. 9263.

On motion of the plaintiff, by Messrs. Gordon & Gordon, his solicitors, it is ordered that the defendant, Mary Washington, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Asso. Justice.

True copy. Test: 52-3 R. J. MEIGS, Clerk

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 24th day of December, 1884.

MARY G. BARTLETT, Plaintiff, vs. THOMAS A. LITTLEFORD, And the unknown HEIRS, if any, of HAMILTON HUGHES, dec'd, Defendants. } In Equity. No. 9246.

On motion of the plaintiff, by Mr. E. B Briggs, her solicitor, it is ordered that the defendants, the unknown heirs, if any, of Hamilton Hughes, deceased cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.

A true copy. Test: 52 R J MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 22d day of December, 1884.

JAMES B. HOUSTON vs. MARY T. GARLAND ET AL. } In Equity, No. 8962.

This cause coming on to be heard upon the report of the trustees of the sales made by them, it is thereupon, upon consideration thereof, this 22d day of December, 1884, ordered, that the sales made and reported by James H. Saville and John F. Cox, trustees for the sale of the real estate of John H Houston, deceased, be and the same are hereby ratified unless cause to the contrary be shown on or before the 23d day of January, 1885, Provided a copy of so much of this order as relates to said sales, be published in the Washington Law Reporter once in each of three successive weeks before said 23d January, 1885.

The report states the amount of sales to be $7,139.40.

W. S COX, Justice

A true copy. Test: 52 R. J. MEIGS. Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Wm. H. Rich, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of December next: they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day of December, 1884.

ADELAIDE V. RICH.

W. W. BOARMAN, Sol'r. 51 Administratrix.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtaned from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Catharine Rossiter, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of December 1884.

EDMUND J. LYNCH.

J. J. WILMARTH, Solicitor, 51 Administrator.

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Washington Law Reporter

WASHINGTON - - - - - - - January 17, 1885.

GEORGE B. CORKHILL - - - EDITOR

Court of Claims.

We note, with great pleasure and satisfaction, the nomination of Hon. William A. Richardson to be Chief-Justice of the United States Court of Claims, which office the venerable and learned Charles B. Drake has just resigned. Judge Richardson has made himself one of the leading jurists of this country by his unceasing labors, and his earnest devotion to the law; and the honors which have been bestowed upon him have never been more fully merited than in this instance. During a part of President Grant's administration he filled the offices of assistant Secretary and Secretary of the Treasury, respectively, with great distinction. In addition to his recognized ability as a judge and a lawyer, he steps into the office of Chief-Justice, eminently qualified for the arduous duties and perplexities which necessarily surround such a high position, by reason of his familiarity with all the workings of the Court of Claims obtained by his service as Associate-Justice, which has reflected great credit upon himself and upon the Government. In his new position, a man of his ability and reputation cannot fail to give entire satisfaction to all. Hon. John Davis will hereafter occupy Judge Richardson's former position as Associate-Justice.

Liens as to Boarding House Keepers.

An inn-keeper has a lien, for his reasonable charges, on the goods of his guest (Pollock v. Landis, 36 Iowa, 650) and that whether the goods which the guest brings with him are his own property, or property with which another has entrusted him (Manning v. Hollenbeck, 27 Wis., 202), though there are some authorities to the contrary on this last point (e g Domestic &c. Co. v. Watters, 50 Ga., 573). The limit of his lien is, that it be for reasonable charges; and it does not extend to the clothing on the person of his guest. (3 M. & W., 248). This lien evidently arises from the peculiar duties which the law has imposed upon an inn keeper for the benefit of the public, and the reasons therefor are given at length in the books which treat of the subject.

Now when we turn from inn keepers, and look to boarding house keepers, *prima facie*, perhaps, it would seem that they also would have a lien of the same nature with that of the inn keeper. But it will readily be seen that the reasons which give the inn keeper his lien have no application here and *cessante ratione legis cessat et ipsa lex*. The strict and peculiar duties which pertain to the inn keeper, the boarding house keeper is under no obligation to observe; for if the law imposes peculiar liability, it will generally give to him, upon whom such peculiar liability is imposed, peculiar rights, and in this way, while distinguishing the relation from others by such rules of law, will place the parties so related again upon as favored a footing as they originally would have been had no such rules of law ever interposed themselves. The line between an inn keeper and a boarding house keeper is sharp and distinct, and the law has so clearly defined them that no one can long remain in doubt as to whether a certain party is, in law, one or the other. An inn keeper may, at the same time, as to some of those who stop with him, stand in the strict relation of inn keeper and as to others, he may be nothing more than a mere boarding house keeper. This, of course, occurs when the party who stays with him, does not do so in the

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nature of a guest in its legal sense, but simply as a boarder; and so, in such case, as to his guest proper, one set of rules applies, while as to him who merely boards with him, wholly different rules govern. (Manning v. Hollenbeck, *supra* 8 Rich., S. C., 423 *et vide* Cooley on Torts, 638.) These two relations existing at the same time are not at all inconsistent, nor does the law make them so.

It follows from these rules of law, therefore, that the boarding house keeper must recover his reward from the boarder himself, without regard to any goods belonging to his boarder which he may have in his possession, and if he should retain the goods of his boarder, refusing to give them up on demand, replevin or detinue may be brought therefor by the boarder and the goods recovered, and the boarding house keeper will not be allowed to set off his debt due him from his boarder, for, in actions for torts, as trespass or case, replevin or detinue, set-offs cannot be allowed. (1 Saund. Pl. & Ev., 790, citing 18 Tidd., 715, 4 T. R. 512, and Montague on Set-off.) And hence, if he fails to recover his debt from his boarder in the ordinary way, it follows that there is no other manner in which he can get any return, though he have, in his possession, goods of his boarder of whatever value, for upon them he has no lien.

Reciprocal Rights and Duties of Adjo'ning Lot-Owners as to Grading and Excavating.

In the Supreme Court of the District of Columbia.

CINGRIA *vs.* HOLTZMAN and STEEP.

LAW. No. 23,908.

Tried before Justice Hagner, December 11, 1884.

This case involved the questions of law discussed in the following brief of the plaintiff's counsel; and his Honor's ruling was in substantial accord with the conclusions of law herein set forth. The questions discussed in this brief are of the highest interest to property owners in Washington.

1. If two persons own adjoining lots lying below the grade of the street on which they front, and one of them wishes to grade up to the street he must so fill up his own lot that the earth will not pass over his line upon the other lot; and where the latter has built a wall and erected a house on it, within his own line, the former can neither build to the wall nor throw against it; and if he does so he is liable in damages.
2. Even if no injury was done to the wall, the plaintiff would still be entitled to nominal damages for covering up his land between his line and the wall of his house; and where the wall was cracked and injured by filling earth against it, he was entitled to damages for the injury done.

C. S. BUNDY for plaintiff.

SHELLABARGER & WILSON for defendants.

Hutchinson & Rourke v. Schemmelfeder, 40 Pa., 396. This case arose in the Common Pleas of Alleghany Co., Pa., and was heard on appeal in the Supreme Court of Pennsylvania. In rendering his decision, the presiding justice, commenting on the case, and citing numerous cases bearing on the rights and duties of adjoining owners, stated "that, under all circumstances, the party filling up must build a wall upon his own ground and fill against it, so his earth would not fall upon his neighbor's lot; and *vice versa* if a person wants to dig or excavate below his neighbor's grade, he must support his neighbor's land by proper wall to keep the earth from falling from his neighbor's lot." Dodd v. Holme, Adolphus & Ellis, 493; Egerton v. Brownlow, H. L. Cases, vol. 4, p. 195; Humphries v. Brogden, 12 Q. B., 739; Wyatt v. Harrison, 3 Barnwell & Addison. Pardessus on Servitudes, p. 224, et seq.

Doctrine and principles cited in above authorities:

Edgerton v. Brownlow, H. L. Cases, Vol. 4, p. 195. The principle embraced in the maxim "*sic utere tuo ut alienum non laedas*," applies to the public in at least as much force as to individuals. Lord Truro. Further, on page 267, line 18, "a man may dig in his own land, but if he damages his neighbor's house or property, he is liable for the damage."

Dodd v. Holme. A man has no right to erect a new edifice on his ground so as to prejudice what has long been enjoyed by another. See Dodd v. Holme, Adol.

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& Ellis, 493. Holme made excavation; Dodd's property was injured. Verdict for plaintiff.

Humphries v. Brogden. 12 Q. B., 739. Plaintiff occupied surface land, defendant made excavations and the surface gave way; sued for excavating negligently and improperly, and without having proper support. Damages for plaintiff.

Idem, p. 734, Hilton v. Whitehead. Similar case. Verdict for plaintiff.

Broom's Maxims, 250. If a man, in pulling down his own house, occasions damage to, or accelerate the fall of his neighbor's, he will be clearly liable. Illustrated by citing Bradbee v. Mayor of London and others, 5 Scott, N. R. p. 120.

Wyatt v. Harrison, 3 Barnwall & Addison. Held, that if complaint had been that the digging occasioned a falling in of soil of plaintiff, to which no additional weight had been added, damages should be allowed. Numerous cases are referred to in this case.

Comyn's Digest; action on the case of nuisance. A. It is said that if a man dig a pit in his land so near that my land falls into the pit, an action on the case lies. The same principle was recognized in Slingsby v. Bernard, 1 Roll., 430. In Roberts v. Reed, 16th East, 215; Smith v. Martin, 2 Saunders, 394.

Broom's Maxims. Not only does the law give redress where a substantial injury to property is committed, but even the erection of anything offensive near the house of another, so as to render it unfit for habitation is actionable. Twenty years toleration becomes an acquired right.

Viner's Abridgement, vol. 2, p. 14, No. 49. A had a house newly built, B dug a cellar in his own land so near it that his house was undermined and fell; damages awarded A.

References are made by the British judges to the works of the great French writer, Pardessus, whose works, they say, are more complete than any others upon the respective rights of adjoining property owners. See Pardessus' "Traits des Servitude," p. 248–260.

Referring to land of unequal level or sloping lands, Pardessus says: "It often happens that the owner of an inclined lot wishes to cut it (*apic*) vertically on his neighbor's side in order to lower it to a level. He must support by a wall the upper land which thereby ceases to be supported by the land inclined, and he quotes *Desgolets sur les Artes*, 187, 191, 192, *de la Cont. de Paras.*

On page 225, he continues as follows: "The owner of the lower lot must maintain the wall up to the level of the soil which it supports. A wall above that point intended to make the partition between the two lots, may be built on the top of said wall from the line of the surface of the upper soil to the legal height for partitions, and the cost of the latter is borne in common between the two owners." It is thus clear that the lower owner can cut down, but he must, while cutting, build a wall up to the surface, at his cost, in order to support the bank cut, and he must, moreover, keep the said wall in good condition at his own cost which is the meaning of the French word *entertinir* used by the writer.

On the same principle damages were awarded in the following cases: Chadwick v. Trover, 6 Binghams, (new cases 1 and 3) 334; Davis v. London & B. R. R., 2 Scott's New Reports, 120; Upton v. Mayor of London, 9 B. & C., p. 725; Smart v. Morton, 5 E. & B., 30. (A mine case.)

Roberts v. Read and others, 16 East, 215. In an action on the case plaintiff declared that on the 1st of December, 1809, at Penzance, in Cornwall, she was, and still is, seized for her life of a garden with the appurtenances in which, until the grievances after mentioned, there was a wall two hundred feet long, abutting on a public street in Penzance, and that the defendant on the 1st of May, 1810, and on other days, wrongfully and injuriously dug up so much of the soil adjoining and near to the wall on the side next to the street for two hundred feet, and removed the same, and thereby not only exposed and laid open the foundation of the wall to the rain and flowing of waters thereto, and to the frost and inclemency of the weather, but greatly weakened the wall, by reason whereof one hundred feet, afterwards, on the 1st of September, 1810, fell down, and the remainder was greatly injured.

At the trial, before Graham, B., at

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Bodewin, the case opened on the part of the plaintiff, was that she ought to recover damages against the defendants for a wrong done by them in their capacity as surveyors of the highways for the town of Penzance in undermining her wall; and it appeared in evidence that the act done by their order for the purpose of making some improvements in the street, and which ultimately occasioned the mischief, was in May, 1810, though the wall did not fall till the 31st of January, 1811; and that this action was not commenced till the 13th of April, 1811.

Whereupon the defendant's counsel objected that the action was brought too late, by the statutes, 13 Geo. ch. 78, 5, 81, which enacts "that if any action shall be commenced against any person for anything done or acted in pursuance of this act, such action shall be commenced within three calendar months after the fact committed, and not afterwards." And he contended that here the thing done or acted by the defendants was the undermining of the wall, which was a mere consequence of such wrongful act. The plaintiff, however, recovered a verdict for the amount of the damages sustained by the directions of the learned judge, who gave leave to the defendant's counsel to move to set it aside, and enter a nonsuit if the court should be of a different opinion.

Jekyll now moved accordingly, and contended that the wrongful thing done or acted by the defendants was the undermining of the wall, which happened more than three calendar months before the action commenced. The legislature limited the time so narrowly in order that officers of this description, sued for what they did *ex officio*, might have the means of indemnifying themselves, if sued, while they were in office, or, at least, before they passed their accounts.

Bailey., J. "How was the damage to be ascertained before it happened? The probable damage might have been estimated by persons of skill. In Goding v. Ferris, 2 H. Black, 14, it was contended that an action could not be maintained against custom house officers for seizing goods, unless brought within three months after the actual seizure, although there was a continual detention of the goods at the time of the action brought." Lord Ellenborough, Ch. J. "It is sufficient that the action was brought within three months after the wall fell, for that is the *gravamen*. The consequential damage is the cause of action in this case. If this had been trespass, the cause must have been brought within three months after the act of trespass complained of, but being an action on the case for consequential damages, it could not have been brought until the specific wrong had been suffered, and that only happened within three months before the action brought." *Per curiame.*

A statement of claim alleged that the defendants deposited on their land and against the wall of the defendants, adjoining the house of the plaintiff, a large quantity of soil, clay, etc., thereby raising the surface of defendant's land above that of the land on which the plaintiff's house was built, and that the plaintiff's house was consequently injured by the percolation of water through the defendant's wall.

Held, that the statement showed a good cause of action. Hardman v. North Eastern R. W. Co., 3 L. R., C. P. Div. 168; 47 L. J. C. P. Div., 368; 38 L. T., N. S., 339, 26 W. R., 489.

IN THE case of Birchall v. The Third National Bank, decided by the Philadelphia Court of Common Pleas, it was held that a depositor, whose check had been wrongfully dishonored by a bank, could recover temperate damages from the bank without proof of special damages; and this, too, although it was shown that the bank was innocently led to dishonor the check through the carelessness of a clerk, who made an error in computing the depositor's balance in the bank.

Promissory Note; Indorser; Duties and Liabilities.—An indorser of a promissory note is something more than a surety. The contract of indorsement means that the indorser will pay on the single condition that the maker or acceptor does not. An indorser of a note has no right to demand that the holder shall sell the collateral in his possession and pay the note out of the proceeds. The indorser's duty is to pay the note, and then he himself can control the collaterals. [McCumant v. Miners' Trust Co. Bank. Pa., May 4, 1884. 41 Leg. Int., 368.]

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United States Supreme Court.

No. 111—OCTOBER TERM, 1884.

THE UNITED STATES, Appellant,

vs.

THE GREAT FALLS MANUFACTURING CO.

Appeal from the Court of Claims.

Where property, to which the United States asserts no title, is taken by their officers or agents, pursuant to an act of Congress, as private property, for the public use, the government is under an implied obligation to make just compensation to the owner.

Such an implication being consistent with the constitutional duty of the government, as well as with common justice, the owner's claim for compensation is one arising out of implied contract, within the meaning of the statute defining the jurisdiction of the Court of Claims, although there may have been no formal proceedings for the condemnation of the property to public use.

The owner may waive any objection he might be entitled to make, based upon the want of such formal proceedings, and, electing to regard the action of the government as a taking under its sovereign right of eminent domain, may demand just compensation for the property.

STATEMENT OF THE CASE.

This is an appeal from a judgment in favor of the Great Falls Manufacturing Company, a corporation of the State of Virginia, for the sum of $15,692 as compensation for all past and future use and occupation by the United States of certain land, water rights and privileges claimed by that company, and all consequential damages which it may legally assert, by reason of the execution of a certain one of the plans adopted by the government for supplying the cities of Washington and Georgetown with water.

The case made by the finding of facts is, in substance, as follows:

On the 31st of August, 1852, Congress appropriated $5,000 to enable the President to cause the necessary surveys and estimates to be made for the best means of supplying those cities with good and wholesome water. 10 Stat., 92, ch. 108. In execution of that act, President Fillmore transmitted to Congress the report of General Totten, of the Corps of Engineers, recommending the construction of an aqueduct from the Great Falls of the Potomac, situated in the State of Maryland, about sixteen miles distant from Washington. The Great Falls form a series of rapids extending for about one-half or three-fourths of a mile, in the course of which the river falls about seventy feet; from which to the tide-level at Washington there is a further fall of about seventy feet. Just above these rapids is Conn's island, lying near the Maryland shore, and distant about 1,400 feet from the Virginia shore. At its head, extending up the stream, are several small islands called the Cyclades, separated from each other and Conn's island by narrow channels. On the Virginia side, is a body of land known as the Toulson tract, extending along the river from a point opposite the middle of Conn's island to a point below the Great Falls, and running back a distance of about half a mile. A considerable portion of it is elevated ground, well adapted to the construction of mills and manufactories, which may be supplied with water power from the river, and by canals, races or other artificial water ways. Before the construction by the government of the dam and other works to be presently referred to, Conn's island divided the Potomac river into two unequal channels, about ninety-eight per cent. of the water passing through the Virginia channel, and two per cent. through the Maryland channel, at low stages; the total flow at low water being estimated at about 1,065 cubic feet per second, or 700,000,000 gallons daily. Of these lands, water rights and privileges, the Great Falls Manufacturing Company claimed to be the owner at and prior to the before-mentioned appropriation of $5,000.

On the 3d of March, 1853, Congress appropriated, "to be expended under the direction of the President of the United States, for the purpose of bringing water into the city of Washington upon such plans and from such places as he may approve, one hundred thousand dollars: *provided*, that if the plan adopted by the President should require water to be drawn from any source within the limits of Maryland, the assent of the legislature of that State should first be obtained." 10 Stat. 206, ch. 97.

On the 3d of May, 1853, the legislature of Maryland passed an act giving her assent to the purchase by the United States of such lands and to the construction of such dams, reservoirs, buildings and other works, within her limits, as might be required under any plan adopted by the President for supplying Washington with water. That act provided that, if the United States could not agree with the owners for the purchase of land, earth, timber, stone or gravel, required for the construction of such works, or in case the owner thereof should be a *feme covert* or under age, *non compos mentis*, or a non-resident, "it shall, nevertheless, be lawful for the United States to enter upon such lands and to take and use such materials, after having first made payment or tendered payment for the same at the valuation assessed thereon," in the man-

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ner prescribed in that act; also, that before the act should take effect, the United States "shall agree to such conditions as the Chesapeake and Ohio Canal Company may consider necessary to secure the canal from injury in carrying into effect any plan that may be adopted for supplying the city of Washington with water as aforesaid."

Then followed certain appropriations by Congress for the purpose of executing the said plan: $250,000 "for continuing the work on the Washington aqueduct" (10 Stat., 664, Act of March 3, 1855, ch. 175); $250,000, or so much thereof as was necessary, "for paying existing liabilities for the Washington aqueduct, and preserving the work already done from injury" (11 Stat., 86, Act of August 16, 1856, ch. 129); and $1,000,000 "for continuing the Washington aqueduct" (11 Stat., 225, Act of March 3, 1857, ch. 108).

By an act entitled "An act to acquire certain lands needed for the Washington aqueduct, in the District of Columbia," approved April 8, 1858 (11 Stat., 263, ch. 14), it was, among other things, provided:

"Whereas it is represented that the works of the Washington aqueduct, in the District of Columbia, are delayed in consequence of the proprietors' refusal, in some cases, to sell lands required for its construction at reasonable prices, and because in other cases the title to the said land is imperfect, or is vested in minors or persons *non compos mentis*, or in a *feme covert*, or in persons out of the District of Columbia; and whereas it is necessary for the making of said aqueduct, reservoirs, dams, ponds, feeders, and other works, that a provision should be made for condemning a quantity of land for the purpose: Therefore,

"*Be it enacted, &c.*, That it shall and may be lawful for the United States, or its approved agent, to agree with the owners of any land in the District of Columbia through which said aqueduct is intended to pass for the purchase or use and occupation thereof; and in case of disagreement, or in case the owner thereof shall be a *feme covert*, under age, *non compos*, or out of the District of Columbia, on application to a judge of the Circuit Court of said District, the said judge shall issue his warrant, under his hand, to the marshal of the said District, to summon a jury."

The rest of the act is limited to mere details.

On the 12th of June, 1858 (11 Stat., 323, ch. 154), the further sums of $800,000, and so much of the $250,000 as was not used under the act of August 18, 1856, were appropriated "for the completion of the Washington aqueduct." Thereafter, on the 27th of July, 1858, proceedings were commenced by the United States, before a justice of the peace in Maryland, for the assessment of the damages which the dam of the Washington aqueduct proposed to be constructed at the Great Falls, should cause to the appellee, of which the latter had due notice. The damages were assessed at $150,000; but, in November of the same year, the inquisition, upon the application of the United States, was set aside by the Circuit Court of Montgomery county, Maryland, and another one was ordered. But there was no further prosecution of these proceedings.

By an act approved March 3, 1859 (11 Stat., 435, ch. 84), the dams, aqueducts, water-gates, reservoirs, and all improvements connected therewith, constructed or to be constructed by the United States, for the conveyance of water from the Potomac river, above the Great Falls, to the cities of Washington and Georgetown, were directed to be placed by the President "under the immediate care, management and superintendence of a properly qualified officer of the United States Corps of Engineers to be appointed by him, who shall act under the Department of the Interior," &c—his decision "to be subject only to appeal to the Secretary of the Interior."

On the 25th of June, 1860 (12 Stat., 106, ch. 211), Congress appropriated the sum of $500,000 for the aqueduct, "to be expended according to the plans and estimates of Capt. Meigs and under his superintendence."

On the 20th of November, 1862, articles of agreement were executed between the Secretary of the Interior, in the name of the United States, and the Great Falls Manufacturing Company, wherein was recited the claim of the latter for compensation for the use by the former of certain lands and water rights at the Great Falls, the cost that would ensue to both parties from any further delay in the settlement of their differences, and the anxiety of the Government to prosecute the work in question; and whereby such claim was referred to arbitrators, one of whom was the late Benjamin R. Curtis, with power to examine into, decide upon, and award such compensation, if any, as the claimant may be entitled to for the use and occupation of said land and water rights, and all consequential damages that the company might legally claim by reason of the execution of the several plans adopted by the Government in the location and construction of the dams and other works of the Washington aqueduct. Pursuant to this agreement, the United States and the claimant appeared by counsel before

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the arbitrators, witnesses were examined, and documentary evidence was submitted by the respective parties.

At the hearing, the Great Falls Manufacturing Company filed with the arbitration a specific description of the lands to which they asserted title, and which they claimed would be affected by the improvements made, or proposed to be made. The United States filed the specifications of their proposed plan of operations, being four in number. The arbitrators made an award in writing on the 28th of February, 1863, all the costs and expenses of which, including $12,000, the amount of compensation charged by them, were paid by the Secretary of the Interior out of the appropriations for the completion of the Washington aqueduct. By the award it was determined that the amounts to which the company was entitled, as compensation and damages for the use and occupation by the United States of the land, water rights and privileges claimed by it, were as follows: If the first plan of improvements was carried into execution, $63,766; if the second, $50,000; if the third, $77,200; if the fourth, $15,692. The fourth plan involved the construction of a dam of masonry from the Maryland shore to Conn's island, and gave the United States the right to deepen the channels in the Maryland side of Conn's island near its head, so as to supply the aqueduct with whatever quantity of water the dams would yield.

The claimants presented to the arbitrators title deeds and proofs showing a valid title in it to the Toulson Tract, Conn's island, and the Cyclades. Objections were presented and urged on behalf of the United States, but the arbitrators held the title of claimants to be valid and satisfactory. No other title than that of claimant is asserted.

The conduit through which the water supply of the city of Washington is drawn was completed on the 5th of December, 1863.

On the 4th of July, 1864, Congress appropriated the sum of $150,000 "for the purpose of constructing *the dam of solid masonry across the Maryland branch of the Potomac river, near the Great Falls*, and for constructing the conduit around the receiving reservoir, and for paying *existing liabilities* and expenses, engineering, superintendence and repairs of said aqueduct." 13 Stat., 384, ch. 244.

On the 30th of July, 1864, the United States entered into a contract for the construction of that dam, and, proceeding to construct it, took possession of so much of Conn's island as was required for the purpose of securing the dam and making a permanent abutment for it. And on July 28, 1866, the further sum of $51,687 was appropriated "to complete the dam in the Potomac river at the head of the aqueduct, from the shore to Conn's island with cut stone." 14 Stat., 316. The dam so constructed is about 1,176 feet long. It extends from a point on the Maryland shore, just below the feeder or mouth of the aqueduct, across the channel between Falls island and Conn's island, to its abutment on the latter island, closing the Maryland channel of the river entirely across. It was constructed substantially in conformity with the fourth of the alternative plans presented to the arbitrators by the United States. Conn's island, in connection with the Maryland shore and the dam, forms such a basis as is necessary for the purpose of supplying the aqueduct, having its upper end open to receive the flow of the water as needed. There is no other island or natural formation which could be utilized for forming a suitable basin without carrying the aqueduct much farther up the river. So that if that island was not used it would be necessary to incur the expense of a larger aqueduct and to carry the dam across to the Virginia shore, either above or below the island, or build some structure to take the place of the island. From any point below the rapids the elevation is insufficient to admit of the distribution of water by aqueduct; but there is sufficient elevation for that purpose from any point above them. The uses of the aqueduct require the entire flow of the water in the Maryland channel in the low stages of the river. The water drawn through it is distributed in the cities of Washington and Georgetown for the use of the Government in its buildings, navy-yard, fountains, &c., and for the municipal and domestic uses of the said cities and their inhabitants. The cost of the present dam is $77,250, while that of the aqueduct is nearly four millions of dollars.

It is also found as a fact that the value of the water for the uses to which this is applied is derived from its elevation, which will admit of its flow or descent through the city; and when found at sufficient elevation to admit of being distributed by its natural flow, it possesses great value, and is paid for by cities, when taken from the control of private owners, according to its value.

Upon this state of facts, the Court of Claims found, as a conclusion of law, that the claimants were entitled to the judgment from which the present appeal is prosecuted.

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Mr. Justice HARLAN, after stating the facts, delivered the opinion of the Court.

The articles of agreement of November 20, 1862, between the Secretary of the Interior and the Great Falls Manufacturing Company made ample provision for the protection of the public interests; for, the right was reserved to the party dissatisfied, to proceed by suit in equity in the proper court of this District for the purpose of having the award set aside or changed, and of obtaining such a a decree, subject to review by this court, as was just and equitable. There is no doubt of the good faith of the effort of the parties to accomodate their differences, or that it was of the highest importance to the Government that the obstacles should be removed to the successful completion of the work, upon which large sums had been expended. In the opinion of the court below, and in the arguments of counsel, the authority of the Secretary of the Interior to make the Government a party to that agreement is discussed. But, in the view we take, it is unnecessary to determine that question. Our decision may be satisfactorily placed on other grounds.

From the report and documents transmitted to Congress by President Fillmore, it appears that, in the judgment of the engineer department, the best mode of supplying the cities of Washington and Georgetown with wholesome water was by an aqueduct from the Great Falls of the Potomac; also, that such a plan necessarily involved the construction of a dam at that point in the river. Ex. Doc. (Senate) No. 48, pp. 2, 35, 48, 32d Cong., 2d Sess. By the annual report, under date of December 4, 1863, of Mr. Usher, Secretary of the Interior, Congress was informed that "certain parties having from time to time made claim to heavy damages for the diversion of the water from the Potomac river," his immediate predecessor, "with a view to settle and end this claim, entered into an agreement of arbitration with the claimants." The parties referred to were the present claimants, as appears by the agreement of arbitration, by the official documents submitted to Congress, and by the proceedings in the courts of Maryland for an assessment of the damages which the proposed dam should cause to the Great Falls Manufacturing Company. The Secretary said: "Pursuant to this agreement, the arbitrators met from time to time, and finally submitted their award, by which they adjudged in favor of the claimants upon each and all of the plans and modes submitted to them, being three [four] in number, for the construction of the dam across the Potomac, and also $12,000 for their own fees as arbitrators, and $761.84 for the expenses of arbitration. The sums being large, I did not feel justified in applying the existing appropria tion for the completion of the aqueduct to the payment thereof, preferring to submit the whole matter to Congress for its determinetion. It appears from the report of the experienced engineer in charge of the work, as must be obvious to every observer, that an ample supply of water for the use of the cities of Washington and Georgetown, for many years to come, can be obtained from the Potomac by the erection *of a tight dam, extending from the Maryland shore to Conn's Island*, to a height which will give a head of six feet in the aqueduct, and yield a daily supply of 65,000,000 gallons, &c. After expressing the opinion that such a dam could not work injury to the proprietors of the water rights claimed at the Great Falls, the Secretary recommended that a reasonable sum be appropriated to pay the expenses of the arbitration, and that the cost previously estimated of a dam across the main channel be diminished to that of the proposed dam over the east channel.

In conformity with that recommendation, Congress, by the act of July 4, 1864, made the appropriation of $150,000 for the purpose of constructing the proposed dam of solid masonry, and for paying the existing liabilities and the expenses connected with the engineering, superintendence and repairs of the aqueduct. Immediately thereafter a contract was made for the construction of that dam. In his next annual report, under date of December 5, 1864, the Secretary informed Congress that the work upon the dam and the aqueduct required the expenditure of the additional sum of $51,945. For that amount an appropriation was promptly made. With the Secretary's report was transmitted to Congress that of the engineer in charge, who stated that "the question of land damages and water rights at the Great Falls still remains unsettled." The dam was completed to its present height in 1867, and is used as an indispensable part of the system by which the cities of Washington and Georgetown have been supplied with water. Beyond doubt, the land and the water rights and privileges in question have been for nearly twenty years held and used by officers and agents of the government, without any compensation whatever having been made therefor to the claimant. By what authority have they appropriated to public use the property of the claimant? The answer to this question will determine whether the present demand of the claimant arises out of an implied con-

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tract, and, therefore, enforcible by suit against the United States in the Court of Claims.

It seems clear that these property rights have been held and used by the agents of the United States, under the sanction of legislative enactments by Congress; for, the appropriation of money specifically for the construction of the dam from the Maryland shore to Conn's island was, all the circumstances considered, equivalent to an express direction by the legislative and executive branches of the government to its officers, to take and use this particular property for the public objects contemplated by the scheme for supplying the capital of the nation with wholesome water. The making of the improvements necessarily involved the taking of the property; and if, for the want of formal proceedings for its condemnation to public use, the claimant was entitled, at the beginning of the work, to have the agents of the government enjoined from prosecuting it until provision was made for securing, in some way, payment of the compensation required by the Constitution—upon which question we express no opinion—there is no sound reason why the claimant might not waive that right, and, electing to regard the action of the government as a taking under its sovereign right of eminent domain, demand just compensation therefor. (Kohl v. United States, 94 U. S., 374. In that view, we are of opinion that the United States, having by its agents, proceeding under the authority of an act of Congress, taken the property of the claimant for public use, are under an obligation, imposed by the Constitution, to make compensation. The law will imply a promise to make the required compensation, where property, to which the government asserts no title, is taken, pursuant to an act of Congress, as private property to be applied for public uses. Such an implication being consistent with the constitutional duty of the government as well as with common justice, the claimant's cause of action is one that arises out of implied contract, within the meaning of the statute which confers jurisdiction upon the Court of Claims of actions founded "upon any contract, express or implied, with the Government of the United States."

This case is materially different from Langford v. United States. 101 U. S., 341. That was an action in the Court of Claims against the United States to recover for the use and occupation of certain lands and buildings to which the claimant asserted title. It there appeared that, throughout the whole period of such occupation and use, the title of the claimant was disputed by the government, and that possession was taken and held by its agents in virtue of a title asserted to be in the United States. The jurisdiction of the Court of Claims was attempted to be sustained upon the ground that the government, in taking and using the property of an individual, against his consent and by force, could not, under the relations between it and the citizen, commit a tort, but was under an implied obligation, created by the Constitution, to pay for the property, or for the use of the property so taken. This proposition was held to be untenable under the facts of that case, for the reason that, while individual officers of the government might be guilty of a tort, if the property so held by them was in fact private property, yet, if the government never recognized the property as private property, taken by its agents for public use, it could not be held liable for its value as upon implied contract. In the same case it was said: "We are not prepared to deny that when the Government of the United States, by such formal proceedings as are necessary to bind it, takes for public use, as for an arsenal, custom-house or fort, land to which it asserts no title, but admits the ownership to be private or individual, there arises an implied obligation to pay the owner its just value. It is to be regretted that Congress has made no provision by any general law for ascertaining and paying this just compensation. And we are not called on to decide that when the government, acting by the forms which are sufficient to bind it, recognizes the fact that *it is* taking *private* property for public use, the compensation may not be recovered in the Court of Claims. On this point we decide nothing."

The question thus reserved from decision is substantially the one now presented. In the present case there was, it is true, no statutory proceedings for the condemnation of the claimant's property rights. Such proceedings as has been stated were instituted by the United States in one of the courts of Maryland, in which the property rights of the claimant were expressly recognized. But they were abandoned. One reason, perhaps, for such abandonment was that, in the judgment of the officers of the United States, a fair assessment of damages could not be had in the mode prescribed by the Maryland statute. Be this as it may, it is clear, from the record, that the government did not assert title in itself to this property, at the time it was taken.

Having abandoned the proceedings of condemnation, the proper officers of the Government, in conformity with the acts of Congress, constructed the dam from the Maryland shore

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to Conn's island, the doing of which necessarily involved the occupation and use of the property, as contemplated in what was called the fourth plan for bringing water from the Great Falls to Washington and Georgetown. In such a case, it is difficult to perceive why the legal obligation of the United States to pay for what was thus taken pursuant to an act of Congress, is not quite as strong as it would have been had formal proceedings for its condemnation been resorted to for that purpose. If the claimant makes no objection to the particular mode in which the property has been taken, but substantially waives it, by asserting, as is done in the petition in this case, that the government took the property for the public uses designated, we do not perceive that the court is under any duty to make the objection in order to relieve the United States from the obligation to make just compensation.

In reference to the title which the government will acquire, as the result of this suit, there would seem to be no difficulty. The finding of the court is, that the claimant exhibited to the arbitrators a valid title to the lands in question. It does not appear that the company has ever parted with that title; and the finding is, that no title except that of the claimant is asserted.

What has been said is sufficient to dispose of the case, and requires an affirmance of the judgment.

It is so ordered.

Female Notaries.

New York City Court—Special Term.

WILLIAM C. FINDLAY against LEANDER H. THORN ET AL.

A verification certified to by a female notary is valid as to third persons, and furnishes no ground for returning the pleadings. The parties to the record cannot test the eligibility of a female to hold office in any such collateral manner. The right can be tested only in a direct proceeding brought for the purpose, in which the notary may defend her title.

MCADAM, C. J.: The reply interposed to the counter claim contained in the defendant's answer was returned, because the certificate to the jurat is signed, "Jennie Turner, notary public." The complaint and answer were verified, and unless the reply contains a legal verification, the defendants had the right to return it as an unverified pleading. The defendants place their objection upon the ground that Miss Turner, being a female, is ineligible to public office, and cannot therefore legally perform the functions of a notary. Miss Turner was appointed by the Governor, and the appointment was confirmed by the Senate. She has filed her official oath and has received her commission, and is in possession of the office, exercising its functions, and her right to the office cannot be questioned except in a direct proceeding brought by the Attorney General in the name of the People, in which the notary may defend her right to the office. It cannot be determined in the collateral manner in which the defendants present their objection. When the appointing power can lawfully be exercised upon a particular office, the appointee, after qualifying and entering upon the office, becomes an officer *de facto*, if not *de jure*, his acts are legal so far as the public is concerned, and his capacity or qualification for the office cannot be inquired into collaterally. People v. White, 24 Wend., 520; People v. Lambert, 76 N. Y., 220.

In The People v. Dean (3 Wend., 438), it appeared that a minor was appointed a commissioner of deeds. The clerk of the Common Pleas refused to administer the oath of office, upon the ground that the appointee, being a minor, was incapable of holding the office. The Supreme Court held: "It is not the province of the officer to whom application is made to administer the oath of office, to determine whether the person presenting himself is or is not capable of holding an office. It is the duty of such officer, on the production of the commission, to administer the oath. If an appointment has been improvidently made, there is a legal mode in which it may be declared void," and a mandamus was thereupon ordered, directing the clerk to administer the official oath.

Whether a female is capable of holding public office has never been decided by the courts of this State, and is a question about which legal minds may well differ. The Constitution regulates the right of suffrage, and limits it to "male" citizens (Const., Art. 2, sec. 1). Disabilities are not favored and are seldom extended by implication, from which it may be argued that if it required the insertion of the term "male" to exclude female citizens of lawful age from the right of suffrage, that a similar limitation would be required to disqualify them from holding office. Citizenship is a condition or status, and has no relation to age or sex (Lectures of Prof. Dwight).

It may be contended that it was left to the good sense of the executive and to the electors to determine whether or not they would select females to office, and that the power being lodged in safe hands, was beyond the danger of abuse. If, on the other hand, it be seriously contended that the Constitution, by

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necessary implication, disqualifies females from holding office, it must follow as a necessary consequence that the act of the legislature permitting females to serve as school officers (1880, chap. 9), and all other legislative enactments of like import removing such disqualification, are unconstitutional and void. In this same connection, it may be argued, that if the use of the personal pronoun "he" in the Constitution does not exclude females from public office, that its use in the statute can have no greater effect. The statute, like the Constitution, in prescribing the qualifications for office, omits the word "male," leaving the question whether female citizens of lawful age are included or excluded one of construction.

I make these observations for the purpose of showing that the question whether females are eligible to public office in this State is one not entirely free from doubt, and should not therefore be decided where it arises, as it does here, incidentally and collaterally. When the law officers of the State see fit to test the question in a direct proceeding brought for the purpose, it will be time enough for the courts to attempt to settle the contention. In such a proceeding, the case of Robinson (131 Mass., 376, and that reported in 107 Mass., 604), holding that females cannot hold public office, and those decided in other States that they can hold office, may be examined and considered.

For the purpose of this motion, it is sufficient to decide that the reply was verified before a person holding the office of notary public, under a commission granted by the legally constituted appointing power; that the defendants cannot, in a collateral proceeding, to which the notary is not a party, try the question of her eligibility to the office; that her acts are valid as to third persons and the parties to this record.

The motion to compel the defendants to accept the reply as a properly verified pleading will therefore be granted.—*N. Y. Daily Register.*

NOTES OF RECENT DECISIONS.

1. *Arbitration: Award without New Hearing after Third Party is Selected.*—Where a a controversy is submitted to two arbitrators under an agreement for the selection of a third one in case the two are unable to agree, and after a hearing and disagreement they select a third man, an award made by two of them without giving the party against whom it is rendered an opportunity of being heard, is void, and no recovery can be had upon it.

2. *Same: Of the Proof of a Waiver of Right of a Hearing.*—Where an umpire or third party is, by agreement, called by two arbitrators, upon their being unable to agree, in the absence of evidence to the contrary, it will not be presumed that the parties have waived the right of being heard and giving evidence before any award is made. The proof of a waiver of such right must be distinct and unequivocal.

Trial: Absence of Judge during.—The absence of the judge from the court room during the argument of a case before the jury, in the absence of a showing or inference that such absence was prejudicial to the party complaining thereof, will not be sufficient to warrant the court in disturbing the judgment. [Baxter v. Ray; Supreme Court of Iowa, December, 1883.]

Vendor and Vendee: Defective Title; Misrepresentation; Defenses in Action for Purchase Money.—Where the vendor of land represents the title as clear and unincumbered, knowing at the time that there are defects in it, he cannot defend himself from the coneequenses of such mirepresentations by setting up that the vendee might have discovered the defects by examining the records.

In an action by the vendor of land against the vendee for the purchase money, it is no defense for the latter to set up a defect in the title. He must look to the covenants of warranty and wait for an eviction (unless the vendor is insolvent or non-resident). But if the vendor has never put the vendee in possession of the land, that will be taken as a breach of the warranty, and the vendee may rely on it as a defense in an action for the purchase money. [Pryse v. McGuire; Sup. Court of Ken., Feb., 1884.]

Wagers: Stakeholder; Notice not to Pay.—When money is deposited with a stakeholder, on a wager, either party may withdraw from the illegal transaction, at any time before the result is ascertained and the money paid over to the winner; and if the stakeholder pays over the money to the winner after being notified by the loser not to pay it, an action lies against him at the suit of the loser.

Money being bet on the result of a Congressional election, and deposited with a stakeholder, a payment by him to the supposed winner, after the result of the election is generally known or "publicly announced," but before the issue of an official certificate by the Secretary of State, is premature, and is no defence to an action by the loser, who, before the issue of the certificate, notified him not to pay. [Lewis v. Bruton; Sup. Court of Ala., March, 1884.]

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The Courts.

United States Supreme Court.

No. 935. Eugene J. A. Drennen et al., etc., v. The London Assurance Corporation; judgment reversed with costs and cause remanded with directions to award a new trial. Opinion by Mr. Justice Harlan.

No. 133. Otis A. Thayer et al. v. Life Association of America et al.; decree reversed with costs and cause remanded with directions to set aside the decree appealed from, and to remand the cause to the State Court. Opinion by Mr. Justice Harlan.

No. 7. William J. Bryan et al. v. Ferdinand B. Kennett et al.; judgment affirmed with costs. Opinion by Mr. Justice Harlan.

No. 73. The Knickerbocker Life Insurance Company v. P. H. Pendleton; judgment reversed with costs and cause remanded with directions to award a new trial Opinion by Mr. Justice Bradley.

No. 871. Francis Barbier v. Patrick Connelly; judgment affirmed with costs. Opinion by Mr. Justice Field.

No. 114. Emmeline S. Whitney et al. v. Elisha Morrow; judgment affirmed with costs. Opinion by Mr. Justice Field.

No. 139. The St. Paul and Sioux City Railroad Company v. The Winona and St. Peter Railroad Company; judgment affirmed with costs. Opinion by Mr. Justice Miller.

No. 1060. Pullman Palace Car Company et al. v. Robert J. Speck et al. Opinion by Mr. Justice Miller.

No. 844. Charles E. Hess v. William Reynolds, admini-trator, etc.; judgment reversed with costs, and cause remanded with directions to proceed in the case according to law. Opinion by Mr. Justice Miller.

No. 952. The Missouri Pacific Railway Company v. Peter Humes; motion to assign for argument with No. 323; granted

No. 921. The County of Dakota v. Henry H. Glidden; submitted.

No. 1004. The Schooner Maggie J. Smith, etc., v. Samuel H. Walker et al.; motion to dismiss or affirm; submitted.

No. 902. Roy Stone, plaintiff in error, v. Robert G. Chisholm et al. Submitted under twentieth rule.

No. 873. The Northern Liberty Market Company v. John R. Kelly; submitted.

No. 1253. Howard C. Chapin v. James Streeter; dismissed with costs.

Ex parte in the matter of Clinton B. Fisk; petition for a writ of habeas corpus; motion for leave to file petition submitted.

Nos. 1027 to 1031. Jesse J. Murphy et al. v. Alexander Ramsey et al.; assigned for January 28, next.

No. 703. Jose Aurrecoechea v. Amos S. Bangs; submitted under twentieth rule.

No. 1235. Rudger Clawson v. The United States; argued.

No. 140. Kate J. Baylis, by her guardian, etc. v. The Travelers' Insurance Company of Hartford, Conn.; argued.

JAN. 12, 1885.

P. S. Grosscup, of Chicago, James E. Briggs, of Newark, N. J., and Edward W. Watson, of Holly Springs, Miss., were admitted to practice.

No. 117. John K. Findlay, plaintiff in error, v. Thomas McAllister et al. Judgment reversed with costs and cause remanded for further proceedings to be had therein in conformity with the opinion of this court. Opinion by M. Justice Woods; Mr. Justice Miller and Mr. Justice Field dissenting.

No. 131. Ellis Griffith v. Alexis Godey and C. S. Williams. Decree reversed with costs and cause remanded with directions to enter a decree in conformity with the opinion of this court. Opinion by Mr. Justice Field.

No. 1004. The schooner Maggie J. Smith, &c., v. Samuel H. Walker et al. Motion to dismiss or affirm denied.

No. 1203. Thomas Howard v. Joel Marcolina de Franca et al. Motion to dismiss or affirm denied.

No. 1094. Wm. H. Polleys et al. v. The Black River Importation Co. Dismissed with costs. Opinion by Mr. Justice Miller.

No. 1247. N. D. Putnam et al. v. George E. Ingraham. Advanced.

No. 1112. John M. Stone et al., &c., v. The Farmers' Loan and Trust Co.

No. 1113. Same v. The Illinois Central R. R. Co.

No. 1114. Same v. The N. O. and Northeastern R. R. Co. Advanced.

No. 155. Charles E. Blake v. The City and County of San Francisco et al. Passed under the rule.

No. 281. Almon P. Newman et al. v. Henry Lowery et al. Dismissed with costs.

No. 1231. Claude Caillot et al., &c., v. Gustavus F. Deetkin. Submitted by leave of court.

No. 946. Mrs. Widow Bernard Avegro, &c , et al. v. William B. Schmidt et al. Submitted under twentieth rule.

Ex parte in the matter of Ellis G. Hughes, petitioner. Motion for leave to file petition for writ of mandamus submitted.

No. 1024. The Fourth National Bank, of St. Louis v. A. L. Stout et al. Motion to dismiss submitted.

No. 40. The Cooper M'g. Co., &c., v. J. W. Ferguson et al. Passed to Monday next.

No. 526. J. S. Morgan & Co. v. The U. S.

No. 527. The U. S. v. the Manhattan Savings Institution.

No. 528. L. Hoffman & Co. v. the United States.

No. 529. The United States v. the Manhattan Savings Institution. Argued.

JAN. 13, 1885.

Hamilton Wallace, of New York City; Charles S. Thomas, of Denver, Col., and T. C. Cutchings, of Vicksburg, Miss., were admitted to practice.

No. 1215. John Thornley v. The U. S. Argued.

No. 1245. Emma V. Brown, administratrix, &c. v. Same. Argued.

No. 625. James W. Harvey et al. v. The U. S.

No. 626. The U. S. v. James W. Harvey et al. Argued.

JAN. 14, 1885.

No. 340. Mary Ann Dunn et al. v. The Citizens' Loan Association. Dismissed with cost.

No. 625. James W. Harvey et al. v. The U. S.

No. 626. The U. S. v. James W. Harvey et al. Argument continued.

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No. 104. Wm. L. Scott et al. v. James N. Burnes. Dismissed with costs pursuant to tenth rule.

Nos. 158. and 159. Joel B. Earhardt v. Anthony Boaro et al. Argued.

No. 160. John H. Coon et al. v. Washington Wilson. Argued.

JAN. 15, 1885.

J. H. Howell, of Bloomington, Ill., was admitted to practice.

No. 1044. Benjamin Butterworth, Commissioner of Patents, v. Samuel Hill et al. Passed pursuant to twenty-sixth rule.

No. 296. Wm. H. C. Goode v. Benjamin Slusser et al., &c. Dismissed. Costs in this court to be paid by appellees.

No. 160. John H. Coon et al. v. Washington Wilson. Argument concluded.

No. 161. Willibald Voss v. Charles. J. Fisher. Argued.

No. 162. The Farmers' Loan and Trust Co. v. The Chicago, Pekin and Southwestern R. R. Co. et al. Dismissed with costs.

No. 163. Caloni Amory Stevens v. The Chicago, St. Louis and New Orleans R. R. Co. et al. Submitted.

No, 166. Anna Price, widow, &c., et al. v. The Penn. R. R. Co. Submitted.

JAN. 16, 1885.

Henry R. Edmonds, of Philadelphia, was admitted to practice.

No. 727. Thomas C. Boone et al. v. Wm. H. Robinson. Dismissed with costs.

No. 168. George D. Burton v. the Town of Greenville. Passed pursuant to twenty-sixth rule.

No. 987. The County of Sacramento v. the Central Pacific R. R. Co. Dismissed with coats.

No. 167. Maggie R. Flagg and W. F. Flagg v. Samuel Walker. Argued.

No. 169, The Steamship Belgenland; &c., v. Theodore Jenson, master of the Norwegian bark, Luna. Argued.

SUPREME COURT OF THE DISTRICT OF COLUMBIA.

GENERAL TERM.

Jan. 12, 1885.

Hetzel v B. & O. R R. Co. New trial awarded.

Edmonston & Son v. Gilbert. Motion for a new trial on exceptions denied

District of Columbia v. Van Horn and Arendes, Case remanded for trial.

Bank of Republic v Hume, Cleary & Co. Continued.

Young v. Young. On hearing.

Jan. 13, 1885.

Same. On hearing

Jan. 14, 1885.

Same. Hearing resumed.

Jan. 15, 1885.

Strong, use of Hurt, v. Totten. Argued and submitted.

Cent. Nat. Bank v. Hume. Appeal bond approved.

Jan. 16, 1885.

Garche v. Hubbell Rule discharged

Flynn et al v. Evans Judgment below affirmed.

United States v. Holliday. Judgment below affirmed.

IN EQUITY.—New Suits.

Jan. 12, 1885.

9284 Robert C. Johnston et al v. Chandler P. Smith et al. To confirm contract. Com. sol., R Fendall.

9285 Wm H. Tucker v. Wm Kolb et al. To enforce judg't at law. Com. sol., W. T. Bailey.

Jan. 13, 1885.

9286. Frank Hume v. John Hayes et al. Judg't creditor's bill Com sol, S. T. Drury.

9287 Courtland Bover et al v. Clementia Jones et al. Creditor's bill. Com. sol., Wm. Twombly

Jan. 14, 1885

9288. Charles G. Williams v Mary E. Williams. For divorce. Com. sol., J G Bigelow.

9289. Lizzie P Robinson v Albert J. Robinson. For divorce. Com. sol, F. T. Browning.

CIRCUIT COURT.—New Suits at Law.

Jan. 10, 1885.

25886. Wm. Rocker v. Bishop W. Perkins et al, Damages, $250 Piffs. attys, Crittenden & Mackey.

25887. Wooster & Adams v. A Devote & Son. Notes, and Acct., $573.72. Piffs atty., J. T Cull

25888. Robert C. Hewitt v James W. Pumphrey. Note. $787 75. Piffs. atty., W. C Stone.

25889. John Losson v. Samuel C. Reid. Judg't of Justice Willson, $75.67. Piffs atty., W, S. Abert.

Jan. 12, 1885.

25890. Edwin B. Garges v. Clayton McMichael. Replevin. Piffs. atty, H. B Moulton.

25891. Eva Doughty v The Supreme Council, American Legion of Honor. Acct, $500. Piffs attys., Crittenden & Mackey.

25892 John B. Govers v. Thomas V. Carr. Notes, $925. Piffs attys, same.

25893. Lord & Packham v. Herman Hollander. Account, $287.77. Piffs. attys., Birney & Birney.

25894. Wm S Hoge v. John T. Varnell et al. Acct., $135.37. Piffs. atty., C. G. Lee.

Jan. 13, 1885.

25895 Richmond & Co. v. Samuel Goldstein. Acct., $195.78 Piffs. atty., J. J Darlington.

25896 Ostby & Barton v. same. Acct. $140 93. Piffs. atty., same.

25897. Samuel T. Williams v Middleton & Co. Acct., $53, 126 30. Piffs. atty, W. F. Mattingly.

25898. John Marbury, jr. v. Charles B. Cropley et al. Damages, 5,000. Piffs atty. J. C Marbury.

25899. John H Brewer. v. Allen C. Clarke. Ejectment. Piffs attys, Bond & Cragin

25900. John M. Finnerty v. Frank Aldrich. Replevin. Piffs. attys., Browne and Spates

25901. Wash. B. Williams v. Tinie M Garrett. Acct., $348 15. Piffs atty., J. J. Wilmarth.

25902. Same v. Estelle Northcutt. Notes, $848.15. Piffs. atty., same.

Jan. 14, 1885

25903 E. Sweeny & Sons v. John Stewart & Son. Note, $1054. Piffs. atty., J. J. Darlington.

25904. Louis Dorr v. Mary F. Freeman. Judg't of Justice Taylor, $68 50.

25905. Frank M. Elkins v. The Vapor Fuel Co. Acct., $990.56 Piffs. attys., Herring and Burton.

25906. Wolf & Co. v. Everett B. Duval. Checks, $224.25. Piffs. atty, J. J. Darlington.

25907 Wm. W Dudley, adm'r, v. Henry C. Johnson. Notes. Piffs attys, Birney & Birney.

25908. M. S. Levy & Sons v. August Dettrich. Acct. $171.38. Piffs attys., same.

25909. Samuel M. Jones & Co. v. Margaret Fitzgerald. Judg't of Justice Helmick, $63.41.

25910. Winfield Stringham v. Nicholas White. Note, $210.46. Piffs. attys, Hanna & Johnston.

25911. Joseph I. Imoberdorff et al. v. John Hitz. Acct., $4 146 Piffs atty., R D. Mussey.

25912. John G. Rodgers v. Thomas G. Morrow. Notes, $180. Piffs. atty., A C. Bradley.

PROBATE COURT.—Justice James.

Jan. 12, 1885.

John Hart was appointed guardian to Charles E. McIntire; bond, $100.

Estate of Ellen W. Tuttle; order passing first account of amd'r.

Will of Alexander Murray; returned by M. H. Housman with commission executed.

Theodore W. Hillery gave bond as guardian to Irene and Jesse Hillery, his infant children.

Jan. 16, 1885.

Estate of Wm. Middleton; will admitted to probate and letters issued to Catherine M Middleton.; bond, $2,800.

Estate of Mary Virginia Cole; will proven and letters issued to Samuel J. Cole; bond, $200.

Estate of Charles D. Gilmore; Job Barnard and S. S. Bond appointed administrators.

Estate of W. S. Mitchell; Rebecca E. Mitchell appointed administratrix; bond, $500.

Estate of A H. Martin; petition to invest funds filed.

Estate of E. N. Callan; order appointing M. P. Callan administrator under $500 bond.

Mary Ann Johnson; order appointing her guardian of her five children; bond, $2 000.

Jan. 17, 1885.

Estate of Simon B. Bissell, Sarah M. Bissell, widow, administratrix; bond, $1,000.

Estate of Augusta Asmisson, February 6 appointed for settlement

Estate of John Rickard. Administration bond complete.

Estate of Edward M. Callan; M. P. Callan qualified as administrator.

Mary Ann Johnson completed her bond an guardian to her children.

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Legal Notices.

THIS IS TO GIVE NOTICE,
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration, on the personal estate of Agnes Bryant, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of January, 1885.

H. RANDALL WEBB,
3-3 Administrator.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Adaline Birge, late of Prince George's County, Md., deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of January, 1885.

3-3 ANNA B. SMITH.
NEWTON & BERRYMAN, Solicitors. Administratrix.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January, 12, 1885.

In the matter of the Estate of John Ashley, late of Staunton Station, Tenn. deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Philip H. Sheridan, Lieutenant-General, U. S. Army.

All persons interested are hereby notified to appear in this court on Friday, the 6th day of February next, at 11 o'clock, a. m., to show cause why the said will should not be proved and admitted to Probate, and Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WALTER S. COX, Justice.
Test: 3 H. J. RAMSDELL, Register of Wills.
JAMES LOWNDES, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 16th day of January, 1885.

HOPKINS ET AL. v. HOPKINS ET AL. } No. 8953. Equity.

On motion of the plaintiff, by Mr. J. J. Johnson, their solicitor, it is ordered that the defendant, James Hall, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.
A true copy. Test: 3-3 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 17th day of January, 1885.

AMANDA HURLEY v. JOHN P. HURLEY. } No. 9291.

On motion of the plaintiffs, by Mr. M. J. Ford, her solicitor, it is ordered that the defendant, John P Hurley, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Asso. Justice.
True copy. Test: 3-3 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE
That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of John Moore, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 13th day of January, 1885.

JOHN F. HANNA,
3-3 ANDREW B. DUVALL.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 17, 1885.

In the case of William H Veerhoff, Executor of Augusta Asmissen, deceased, the Executor aforesaid has, with the approval of the court, appointed Friday, the 6th day of February A. D. 1885, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 3 H. J. RAMSDELL, Register of Wills.
REGINALD FENDALL, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 24th day of December, 1884.

MARY G. BARTLETT, Plaintiff, vs. THOMAS A. LITTLEFORD, And the unknown HEIRS, if any, of HAMILTON HUGHES, dec'd, Defendants. } In Equity. No. 9246.

On motion of the plaintiff, by Mr. E. B Briggs, her solicitor, it is ordered that the defendants, the unknown heirs, if any, of Hamilton Hughes, deceased cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.
A true copy. Test: 52 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.
That the subscriber, of Washington, D. C., hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of administration on the personal estate of John T. Rickard, late of Hyattsville, Md, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 27th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of December, 1884.

3-3 LOUIS D. WINE.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 6th day of January, 1885.

NICHOL MAIN v. FLORENCE IRENE MAIN. } No. 9272. Eq. Doc. 24.

On motion of the plaintiff, by Mr. C. C. Cole, his solicitor, an affidavit of a disinterested witness having been filed that the defendant has been absent from the District of Columbia for more than six months, and one summons against her having been returned "not to be found" it is ordered that the said defendant do cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX. Justice.
A true copy. Test: 2-3 R. J. MEIGS, Clerk

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business January 9th, 1885.

In the matter of the Estate of John Casey, late of the District of Columbia deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Samuel Bieber, a creditor.

All persons interested are hereby notified to appear in this court on Friday, the 30th day of January, next, at 12 o'clock m., to show cause why Letters of Anministration on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

W. S. COX, Justice.
Test: 2-3 H. J. RAMSDELL, Register of Wills.
LEON TORRINER, Solicitor.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

FRANK L BEACH v. COLUMBUS BEACH ET AL. } No. 8464. Eq. Doc. 22.

William W. Boarman, trustee, having reported to the court that on the 30th day of December, A. D 1884, he sold to F. Bernheimer part of Sub-lot 19 in Square No. 265, fronting on 14th street southwest twenty (20) feet and running back thirty nine (39) feet four (4) inches at and for the sum of $805:

It is by the court this 2d day of January A. D. 1885, ordered, adjudged and decreed that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 3d day of February, A. D. 1885; provided a copy of this order be published once a week for three successive weeks prior to said last-mentioned date in the "Washington Law Reporter."

W. S. COX, Justice.

A true copy. Test: 1 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, this 31st day of December, 1884.

JAMES B. HOUSTON v. MARY T. GARLAND ET AL. } In Equity, No. 8982.

This cause coming on to be heard upon the supplemental report of the trustees, for the sale of the real estate in the proceedings mentioned, this day filed, it is thereupon and upon consideration thereof, this 31st day of December, 1884:

Ordered, That the offer to purchase Lots five and six in Square forty-two at private sale at and for the price of fifteen hundred dollars cash, as reported by said trustees be and the same is hereby accepted: and that the said sale be and the same is hereby ratified unless cause to the contrary be shown on or before the 31st day of January, 1885; provided a copy of this order be published in the Washington Law Reporter once in each of three successive weeks before said date.

The report states the amount of sales to be $1500.

W. S. COX, Justice, &c.

A true copy.. Test: 1 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

ALEXANDER ET AL. v. BOULDIN ET AL. AND BOULDIN ET AL v. BARNACLO. } Nos 1054 and 5701 Eq Docs. 8 and 17.

This cause coming on this 31st day of December, 1884, upon the trustee's report of sale filed in the cause, and upon consideration thereof, it is hereby ordered and adjudged that the sale to James S. Nash of part of Lot 2 in subdivision of A Bouldin, in Square 525, be and is hereby ratified and confirmed, unless cause to the contrary be shown on or before the first day of February, 1885; provided a copy hereof be published once a week for three weeks

By the Court. W. S COX, Justice.

True copy. Test: 1 R J. MEIGS Clerk, &c.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, this 2d day of January, 1885.

HENRY FETTER v. JOHN BUCHANAN ET AL. } In Equity, No 9107.

This cause coming on to be heard upon the report of the trustee of the sale made by him of the real estate in said cause mentioned, it is thereupon this 2d day of January, 1885:

Ordered, That said sale be and the same is hereby ratified and confirmed unless cause to the contrary be shown on or before the 2d day of February, 1885; provided a copy of this order be published in the Washington Law Reporter once in each of three successive weeks before said day.

The report states the amount of sales to be $1125.

W. S. COX, Justice.

True copy. Test: 1 R J MEIGS, Clerk

THIS IS TO GIVE NOTICE

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John Taylor, late of the District of Columbia, dec'd

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of December, 1884.

EMANUEL M. HEWLETT, Administrator.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business December 26, 1884.

In the matter of the Estate of Margaret Waters, late of Georgetown, D C., deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Collins Crusor

All persons interested are hereby notified to appear in this court on Friday, the 23d day of January next, at 11 o'clock a. m., to show cause why the said Letters of Administration on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

By the Court. W. S. COX, Justice.

Test: 52-3 H. J. RAMSDELL, Register of Wills.

GORDON & GORDON, Solicitors.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 22d day of December, 1884.

JAMES B. HOUSTON vs. MARY T. GARLAND ET AL. } In Equity, No. 8982.

This cause coming on to be heard upon the report of the trustees of the sales made by them, it is thereupon, upon consideration thereof, this 22d day of December, 1884, ordered, that the sales made and reported by James H. Saville and John F. Cox, trustees for the sale of the real estate of John H Houston, deceased, be and the same are hereby ratified unless cause to the contrary be shown on or before the 23d day of January, 1885. Provided a copy of so much of this order as relates to said sales, be published in the Washington Law Reporter once in each of three successive weeks before said 23d January, 1885.

The report states the amount of sales to be $7,139.40.

W. S COX, Justice.

A true copy. Test: 52 R. J. MEIGS. Clerk.

THIS IS TO GIVE NOTICE,

That the subscriber, of Baltimore City. Md, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Lawrason Riggs, late of Baltimore, Maryland, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of December next; they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 5th day of December, 1884.

LAWRASON RIGGS, 82 Cathedral St.,

CALDERON CARLISLE, Solicitor. 52 Baltimore, Md.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, December 26, 1884

In the case of John Cassels, Executor of Elizabeth W. Long dec'd, the Admistrator aforesaid has, with the approval of the court, appointed Friday, the 23d day of January, A D. 1885, at 11 o'clock a. m, for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

Test 52 H J RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphaos' Court Business December 19 1884.

In the case of Joseph J. Waters, administrator of James H Ball, deceased, the administrator aforesaid has, with the approval of the court, appointed Friday, the 30th day of January, A D. 1885, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 52 H. J. RAMSDELL Register of Wills.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

THEODORE A. MILLS ET AL. v. SUSAN E MILLS ET AL. } 9042. Eq. Doc. 24.

Talmadge A. Lambert, Sidney T. Thomas and Charles C. Cole, heretofore appointed as trustees in this cause, having, reported that on the 4th day of December, 1884, they sold, in conformity with the decree heretofore made in this cause directing the same, lot numbered one on the plat of the estate of the Clark Mills, filed in said cause, for the sum of two thousand nine hundred and fifty dollars ($2,950), it is, this 6th day of January, 1885, ordered that said sale stand finally ratified and confirmed unless cause be shown against the same on or before the 6th day of February, 1885. Provided a copy of this order be published for three successive weeks prior to said day in the Washington Law Reporter

By the Court. W. S. COX, Justice.
A true copy. Test: 2 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business. January 7, 1885.

In the case of Mary H. Myers and Martin F. Morris, administrators of John J. Myers, dec'd, the Administrators aforesaid have, with the approval of the court, appointed Friday, the 30th day of January A. D. 1885, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Adminintrators will take the benefit of the law against them; Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test; 2 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 9, 1885.

In the case of Hosea B Moulton, Adm'r of George William Thompson deceased, the administrator aforesaid has, with the approval of the Court, appointed Friday, the 6th day of February A. D. 1885 at 11 o'clock a. m, for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

Test: 2 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Holding a Special Term for Orphans Court Business. January 9th, 1885.

In the case of Francis H. Stickney, administrator of Robert J. Powell, deceased, the Adm'r aforesaid has, with the approval of the court, appointed Friday, the 30th day of January, A. D. 1885, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 2-3 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 10th day of January 6th, 1884.

TAYLOE ET AL. v. WARREN ET AL. } No 9269. Eq. Doc. 24.

On motion of the plaintiffs, by Mr. Wm. Tayloe Snyder, their solicitor, it is ordered that the defendants, Eugenia Phœbe Warren and George B Warren, her husband, Mary Calmes Perry, Thornton Tayloe Perry, Edward Tayloe Perry, Estelle Tayloe Paine John Paine, and Ogle Tayloe Paine, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default

By the Court. W. S. COX, Justice.
A true copy. Test: 2-3 R. J. MEIGS, Clerk.

Legal Notices.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Davis Richards, late of the United States of America, decd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of December, 1884.

CALDERON CARLISLE, Administrator.
1

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Mattie Lathrop, late of the District of Columbia, dec'd

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of December, 1884.

1 HENRY M. BAKER, Executor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 2, 1885.

In the matter of the Will of Esther Ann Stott, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Frank T. Browning.

All persons interested are hereby notified to appear in this court on Friday, the 30th day of January next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WALTER S. COX. Justice.
Test: 1-3 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. December 29, 1884.

In the matter of the Estate of Catharine Robinson, late of Washington City, D. C., deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Michael Boyland.

All persons interested are hereby notified to appear in this court on Friday, the 23d day of January next, at 10 o'clock a. m., to show cause why Letters of Administration, on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX. Justice.
Test: 1 H. J. RAMSDELL, Register of Wills.
H. B. MOULTON, Solicitor

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 30th day of December, 1884.

REUBEN B. CLARK vs. FRANK D. GUNNELL. } No. 25,409 At Law.

On motion of the plaintiff, by Messrs. Hine & Thomas, his attorneys, it is ordered that the defendant, Frank D. Gunnel, cause his appearance to be entered herein on or before the first rule day, occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER. Justice.
A true copy Test: 1-3 R. J MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 2d day of January, 1885.

HAZEL MARION v. CHARLES H. MARION. } No. 9268. Eq. Docket 24.

On motion of the plaintiff, by Mr. E. B. Hay, her solicitor, it is ordered that the defendant, Charles H. Marion, cause his appearance to be entered herein on or before the first rule day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice, &c.
A true copy. Test: 1-3 R. J. MEIGS, Clerk.

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Washington Law Reporter

WASHINGTON - - - - - - January 24, 1885.

GEORGE B. CORKHILL - - - EDITOR

Law Schools.

In their present forms, law schools are quite modern institutions; and they are proof of the care and fidelity with which the science of law is now taught. The greater portion of our large cities now have one or more of these institutions, and they are gradually extending themselves in all directions. Many of them now have reputations considerably more than local. The study of law, instead of being so difficult and dry, as when the student struggles with its elements by his midnight lamp, is now held up to his view in a new and pleasing light, and a peculiar interest and devotion is created in him who wishes to master this great science. By means of these institutions his early path is relieved of many of the difficulties which come not singly to him. Here he comes into recitation rooms, comfortable and inviting; here he associates with others pursuing the same study; here he is instructed by professors, learned in the law, and who, too, well understand the most approved methods of teaching it; here his difficulties and perplexities are explained, and removed by the same trained minds, and here his whole labor is rapidly and thoroughly accomplished. When he leaves these institutions, he also has a knowledge of practice by no means inconsiderable, obtained by his attendance upon and active work in the moot courts, to which every law school pays particular attention. Law schools are in every way as beneficial to the student of law as any of the great colleges to the student of the languages or other sciences; and he who obtains his early knowledge of the law in one of these institutions, may well deem himself peculiarly fortunate. What a vast difference from the manner in which law students labored with the science as described by Sir William Blackstone.

It would appear from these observations that the lawyers of the future, as a class, will ever improve in the science of law, and, in general, the beneficial effects which must be produced by these law schools will be almost infinite. Laws more just and impartial will be enacted; rights and duties will be more distinctly defined; knowledge of government will increase, and so on, indefinitely. Such being the general nature of these institutions, they certainly should be favored and assisted by all.

WE regret to announce the death of the wife of Mr. Justice Matthews, of the Supreme Court of the United States. The court adjourned, as a mark of respect, until after the funeral.

WE take pleasure in stating that the nomination of Judge William A. Richardson to be Chief Justice of the United States Court of Claims, of which we made mention in our last issue, has been unanimously confirmed by the Senate.

CHIEF JUSTICE WAITE, of the Supreme Court of the United States, has so far recovered from his illness as to be able to start on a trip to the south for the benefit of his health. The kind wishes of the profession follow him for his speedy restoration and return.

IN the case of James v. Young (32 W. R., 982), one question was as to the meaning of the words "are, and shall be liable to be, evicted therefrom." The court held that it should be read not as the punctuation indicated, but "are and shall be," not "evicted," but "liable to be evicted therefrom." The word "are" applies not to absolute eviction, but to the possibility of eviction.

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Supreme Court District of Columbia

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

J. A. EDMONSTON *et al.*,

vs.

HENRY P. GILBERT *et al.*

AT LAW. No. 23,859.

Decided January 12, 1885.
The CHIEF JUSTICE and Justices MAC ARTHUR, COX and JAMES sitting.

1. A note consecutively endorsed by three persons, being dishonored, the holder notified by mail the last endorser, who lived in a different city, enclosing him at the same time two notices for delivery to the other endorsers, the last of whom resided in the same city with the holder of the note. These notices the endorser to whom they had been mailed immediately delivered to his next endorser, who, in turn, mailed, on the next day, to the first endorser, the notice intended for him.

Held, Sufficient to fix the liability of the first endorser.

2. The rule laid down in Morton v. Cammack, Mac A. & Mackey, 22, that where the holder and endorser reside in the same city, notice of protest by mail is not sufficient, does not apply to a case where there are several endorsers some of whom live in another city.

STATEMENT OF THE CASE.

This action is brought upon a promissory note against the makers, (a partnership), Booth, Wemple & Smith, and also against one of the endorsers, Henry P. Gilbert, the appellant in this case. The drawers of the note having no defence, interposed no pleas; the endorser, however, insists that he is not liable upon the ground that due and proper notice of the presentment and dishonor of the note was not given him, and the legal sufficiency of the notice claimed to have been given, to charge the endorser, was the matter submitted to the court.

From the bill of exceptions and case stated, these facts appear:

1. That the Citizens' National Bank of Washington City, D. C., was the holder of the note from and after the 12th or at least the 13th day of June, 1882.

2. The note matured on the 16th of July, 1882, adding the days of grace, was positively payable on the 19th of July, 1882.

3. That the endorser, Gilbert, was well acquainted with said Citizens' National Bank and its officers, and they with him, and that he was a hardware merchant, had been in business for nineteen years in Washington, and had often done business with said bank.

4. That on the 21st of July, 1882, the National Farmers and Planters' Bank of Baltimore, Maryland, received from the Citizens' Bank, &c., in a letter dated July 20, 1882, the note, together with notices of protest, for itself, the plaintiffs, and for defendant Gilbert.

5. That on the 21st of July, 1882, the Baltimore Bank notified the plaintiffs and enclosed the notice for the other endorser (Gilbert) to them; that Blundon, one of the plaintiff's firm, on the same day enclosed the notice to the defendant, Gilbert, with a letter from himself in his own name, and this notice and letter were received by the defendant in his morning mail on the 22d of July, 1882.

6. That the endorser, Gilbert, received no other notice of the dishonor of the note than the letter from Blundon of the 21st of July, and the notice enclosed therein.

This was substantially the testimony given in the case.

Whereupon the defendant prayed the court to instruct the jury:

1. That if the jury find from the whole evidence that the Citizens' National Bank of Washington was the party to whom the note in suit was sent for demand and payment, it thereby became and was the real holder of said note for giving and receiving notices in regard thereto; and if the jury shall further find that the said Citizens' National Bank was located and doing business in Washington, and defendant, Gilbert, was also, and had been for a long time previously a resident of, and doing business in the same place, and this was known to said bank, and that no other notice of dishonor of said note in suit was sent to the defendant than the one mailed from Baltimore, Md., on the 21st of July, 1882, then their verdict should be for the defendant.

2. That a notice of non-payment of a note, where the holder and endorser reside, and do business in the same locality or place, must be given to the endorser

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personally, or left at his place of abode or place of business, at least on the day after the dishonor of said note, to bind the endorser.

3. That notice of non-payment of a note when parties reside in the same town or place to the endorser is not sufficient to bind him when sent by mail.

The court refused to grant these prayers; but instructed the jury that upon the whole evidence, the defendant, Gilbert, was liable, and their verdict was so rendered.

BIRNEY & BIRNEY for plaintiff.

FRED W. JONES for defendant Gilbert:

It is submitted: 1st. That a want of proper notice is a complete defence on the part of an endorser, the doctrine which formerly obtained that he must be injured for want of notice having been exploded. Hill v. Heap, 16 Eng. C. L. R., 435.

2d. That the Citizens' National Bank of Washington, D. C., being the real holder of the note before and at the date of its maturity, was the only proper party to give notice of the dishonor of the note to all endorsers. Worden v. Nourse, 36 Vt., 756; Warren v. Gilman, 5 Shepley, 360; Bank v. Perkins, 7 Shepley, 292; Troy Bank v. Capital Bank, 41 Barb.; Ogden v. Dobbins, 2 Hall, 112; Bank v. Fellows, 2 Foster (28 N. H.), 302; Smedes v. Bank, 20 Johns. 379; Thompson v. Bank, 3 Hill, S. C. (law), 77; Id., 1 Riley, S. C. (law), 81; Ib., 23 Am. Dec., 354.

3d. That where the holder and endorser both reside or do business in the same place, to bind or charge the endorser, notice must be given to him personally, or left at his place of abode, or place of business, at least or latest, on the day after dishonor of said note; and notice by mail is not sufficient to charge such endorser. Cabot Bank v. Warner, 10 Allen, 522; Green v. Darling 3 Shepley, 143; Morton v. Ward, 7 Wash. L. R., and authorities there cited; Bailey v. Bank of Mo., 7 Mo., 467; Kramer v. McDarell, 8 Watts & Serg., 138; Stephenson v. Primrose, 8 Porter, 155; Curtis v. Bank, 6 Blackf., 302; Pierce v. Pindar, 5 Metc., 352; Power v. Mitchell, 7 Wis., 161; Norris v. Bank, 10 Mich., 547; Bell v. Bank, 7 Gill, 216; Walters v. Brown, 15 Md., 285; Miranda v. Bank, 6 La., 740.

The note was born in Washington—its maker and payee (the endorser Gilbert) lived and did business in Washington—it was made payable at a bank in Washington, and at its maturity, and for some weeks before, the note was held in Washington.

The Citizens' Bank, and its notary partially construed the law applicable to the case, and interpreted their duties under it. The notice given, itself, advises the endorser, Gilbert, that he is accountable to the "Citizens' National Bank" for the said note, and the notary certifies that the demand and protest was made by him at the request of the "Citizens' National Bank."

But should a note like the one in this suit be taken by an endorsee to a distant place, for instance, San Francisco, California, or London, England, or any other distant place, and there discounted or deposited for collection, would it be, or can it be, held that the payee and first endorser would or could be charged upon a notice from the bank here transmitted to such distant place, but directed to such endorser, and then re-transmitted to the endorser at the same place?

It is obvious that the instructions prayed for embodied and stated the law of the case, and of this court, and should have been granted and given to the jury, and that the court below erred in refusing to give said instructions. It is equally obvious that the instructions given by the court below wrongly stated the law of the case, and. therefore, that as to the defendant Gilbert, who is sued in this action jointly with the makers of the note, the judgment should be vacated and set aside.

Mr. Justice MAC ARTHUR delivered the opinion of the court.

In this case the declaration is upon a promissory note. The first endorser is the payee. It is dated July 16, 1881, payable in 12 months at the Bank of the Republic in this city. Gilbert endorsed the note to Edmonson & Sons, a co-partnership doing business in Baltimore. They placed it, as the period of maturity was approaching, in the National Farmers and Planters' Bank of the the city of Baltimore. That bank endorsed it to the

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Citizens' National Bank of this city for collection.

We have, then, three endorsers; Gilbert, the payee, Edmonson & Sons, and then the National Farmers and Planters' Bank. The note was presented at the Bank of the Republic, and payment refused. It was protested, and notices were enclosed in a communication to the National Farmers and Planters' Bank of Baltimore. The notices of protest appear to have been sufficient to fix the liability of all the endorsers, provided they were properly delivered. The bank in Baltimore delivered the notices to their immediate endorsers, Edmonson & Son, who, in their turn, transmitted the notice to Gilbert, at his residence in Washington. So that we have the three endorsers notified, each giving his immediate endorser notice the same day or the day after receiving it.

There can be no fault found with this method of notifying the endorsers, for it appears to be well established as law that the holder may give notice of the dishonor of commercial paper to his immediate endorser and that one can then give notice to the previous one, and so on through the series of endorsers up to the first, and they, then, all become liable to the holder of the note. If, however, the holder sees fit to give notice only to his immediate endorser he takes that responsibility. If they communicate the notice in time to the antecedent endorsers, it fixes the liability of each and all of them to the holder, although he may have communicated the notice only to his immediate endorser. Now we think that that was done in this case and consequently that the liability of the first endorser is established. It is said that the notices ought to have been served by the Citizens' National Bank upon Gilbert directly. This bank has its habitat in Washington where Gilbert also resides; the general rule is that where the holder and the endorser of a dishonored note live in the same city, service by mail is not suffiicient—that it must be made either at his residence or place of business. This rule has been recognized by a decision of this court in a case where there was but a single endorser; Morton v. Cammack, Mac A. & Mackey, 22. But the law approves the method pursued in this case where there are several endorsers, so that the application of the decision of this court in a case where there was but one endorser can scarcely be applied to a case of this description.

It is said that the notice which was received by the first endorser, who is the defendant, apprised him that he was accountable to the Citizens' National Bank of Washington, and it is upon this ground, it is claimed, that the notice ought to have been served upon him directly by the bank in this city. But the notice was transmitted properly by the bank here to the bank in Baltimore; the bank in Baltimore delivered the notice which had been enclosed for the second endorser, the plaintiffs in this action, and they, in turn, immediately communicated the notice that was designed for Gilbert, the first endorser, by mail, apprising him of the fact that the note had been returned to them dishonored and that they wanted him to pay it, or language to that effect.

I do not know that they could have done anything more to fasten the liability of the defendant, Gilbert.

We are of opinion that the motion for a new trial upon the bill of exceptions should be denied.

United States Supreme Court.

No. 133—October Term, 1884.

Otis A. Thayer and Wm. T. Thayer,

vs.

The Life Association of America, Wm. S. Relfe, Superintendent of the Insurance Department of the State of Missouri, and Edward B. Knight, Trustee.

Appeal from the Circuit Court of the United States for the District of West Virginia.

Two citizens of West Virginia conveyed to a trustee certain real property in that State, to secure the payment of notes executed by them to a Missouri corporation, which was subsequently dissolved, and its assets placed in the hands of a citizen of the latter State. Upon default in payment of the notes, the trustee, under authority given by the deed, advertised the property for sale. The grantors thereupon instituted a suit in equity in one of the courts of West Virginia to enjoin the sale, making the trustee, the Missouri corporation, and the person who held its assets, defendants. Upon the joint petition of that corporation and the defendant holding its assets, the cause was removed to the Circuit

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Court of the United States, and was there finally determined: *Held*, That since the trustee was an indispensable party, his citizenship was material in determining the jurisdiction of the circuit court; and as that was not averred, and did not otherwise affirmatively appear to be such as gave the right of removal, the decree must be reversed and the cause remanded to the State court.

Mr. Justice HARLAN delivered the opinion of the court.

By a duly recorded deed of August 22, 1872, Otis A. Thayer and William T. Thayer conveyed to Edward B. Knight certain real estate in Kanawha county, State of West Virginia, in trust, to secure the payment of several notes executed by the grantors to the Life Association of America, a corporation created and organized under the laws of the State of Missouri. The deed was upon the condition that if the notes were paid at maturity, and the covenants therein contained were kept and performed, the property should be released; but if the notes, or any of them, were not paid as stipulated, or if said covenants were not fully kept, then the deed should remain in full force, with the right in the trustee to take immediate possession of the property; that, after such default, the grantors and their heirs and assigns should hold the premises conveyed as tenants only of the trustee from month to month, and the latter might proceed to sell the property, at public auction, to the highest bidder, on the terms and conditions prescribed by the laws of the State, first giving twenty days' notice of the time, terms, place of sale, and the property to be sold, by advertisement in some newspaper; upon such sale to execute and deliver a deed in fee simple of the property sold; receive the proceeds of sale, out of which shall be paid, first, the cost and expenses of the trust; next, all amounts expended as aforesaid for taxes and other purposes, with interest, as above mentioned; and then, the amount that may remain unpaid on the notes. The deed also provided that any failure to pay the notes at their respective maturities, or to keep its covenants, should cause all of the notes to become and be considered due and payable, for the purpose of the trust, at the time of such default.

Knight, the trustee, under the authority given by the deed, having advertised the property for sale on the 25th of April thereafter, at public auction, to the highest bidder, for the purpose of satisfying the debt secured by it to the Life Association of America, this suit was commenced in the Circuit Court of Kanawha county, West Virginia, by the grantors in the deed of trust, against the Life Association of America, Wm. S. Relfe, Superintendent of the Department of Insurance of the State of Missouri, and Edward B. Knight, Trustee. The bill shows that by a decree of the Circuit Court for the county of St. Louis, Missouri, the Life Association of America was dissolved, and its assets placed in the hands of the defendant, Relfe, as superintendent of the insurance department of that State. It sets out the consideration of the before-mentioned notes, the execution of the deed of trust, and the proposed sale of the property, by the trustee at the instance of Relfe. The complainants contend, upon grounds which need not be here stated, that the trust debt is paid, and that there is a balance due them of $91.63. Claiming that the sale of the trust property would be unjust and inequitable, they ask that the trustee be enjoined from selling it; also, that the trust debt be decreed to be extinguished.

A temporary injunction against the sale was issued. In due time the defendants, the Life Association and Relfe, appeared, and filed their joint petition and bond for the removal of the cause into the Circuit Court of the United States. The petition avers that at that time, as well as at the commencement of the action, the complainants were citizens of West Virginia, while the Life Association of America and Relfe were citizens of Missouri. There is no allegation of the citizenship of Knight, the trustee. He is alleged in the petition for removal, to have no interest in the suit, and to be a nominal party only. The right of removal was recognized by the State court. Subsequently, in the Circuit Court of the United States, a demurrer to the bill was sustained; and no amendment having been made, the suit was dismissed.

The trustee was not a merely nominal party. The object of the suit was to prevent him from selling the property under the power given by the deed of trust. The relief asked could not have been granted without his being before the court. There was no separable controversy between the complainants and the other defendants, touching the sale of the property, which could have been determined between them without the presence of the trustee. He was, therefore, an indispensable party defendant. Whether he had the right and was under a duty to sell the property was the controversy in which all the parties to the suit were interested. His citizenship, therefore, is material in determining whether the suit was one of which the Circuit Court could take cognizance. The record discloses nothing upon that point. He may be—and we infer from the recitals of the

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deed of trnst that he is—a citizen of the same State with the complainants. If such be the fact, the cause was not one that could be removed. As the trustee and the complainants are on opposite sides of the real controversy in relation to the sale of the property, and since it does not appear, affirmatively, that the Circuit Court had jurisdiction, by reason of the citizenship of the parties, the decree must be reversed, with directions—unless such jurisdiction, upon the return of the cause, shall be made to appear—to remand the suit to the State court. Coal Co. v. Blatchford, 11 Wall., 172; Gardner v. Brown 21 Wall., 36; Ribon v. Railroad Co., 16 Ib., 446; Knapp v. Railroad, 20 Ib., 130: Grace v. American Ins. Co., 107 U. S., 278; M. C. & L. M. R. W. Co. v. Swan, 111 U. S. 381-2; American Bible Society v. Price, 110 U. S. 61; Latham v. Barney; 103, Ib., 205; Blake v. McKim, Ib. 336.

Shooting at with Intent to Kill—What must be Averred and Proven—Instruction.

Ohio Supreme Court. Nov. 18, 1884.

FASTBINDER *vs.* THE STATE.

1. In order to convict of shooting at with intent to kill, it must be averred and proved that the gun was loaded with powder and a bullet or some other destructive substance, which when discharged from the gun is calculated to produce death.
2. The fact that the gun was so loaded may be proved by either direct or circumstantial evidence.
3. Where during an angry and violent altercation between the prisoner and the prosecuting witness, the former threatened to shoot the latter, and immediately thereafter procured a gun and discharged it at the latter, it is error for the court to charge the jury, that from this threat alone, they might infer that the gun was loaded.

Error to the Court of Common Pleas of Columbiana County.

Plaintiff in error was convicted and sentenced under an indictment charging him that, with a certain gun loaded with powder and leaden balls, he shot at one Hiram Lamborn with intent to kill.

The evidence tended to show that a violent and angry altercation was in progress between said Hiram and the plaintiff in error, during which the plaintiff in error threatened to shoot said Hiram, and immediately thereafter procured a gun and shot it off near to and at the person of said Hiram.

Some evidence was given that the shot left powder marks on his face, but there was no evidence either positive or circumstantial that the gun was loaded with a leaden ball or other deadly missile, unless the previous threat to shoot said Lamborn raised a presumption that the gun was so loaded.

At the conclusion of the evidence counsel for plaintiff in error requested the following charge, to wit:

"If the evidence given in the case has not satisfied you beyond a reasonable doubt that the gun that the defendant is charged to have shot off at the time, and in the manner charged in the indictment, was not loaded with powder and leaden balls, then your verdict should be for the defendant; that is, that he is not guilty of shooting with intent to kill or wound the said Hiram Lamborn."

Which charge the court refused to give, save as given in the charge below, to which refusal the defendant by his counsel at the time excepted; but the court did give on said point the following charge, to wit:

"Gentlemen: Before you can find the defendant guilty of shooting with intent to kill, as charged in the first count of the indictment, or of shooting with intent to wound, as charged in the second count of the indictment, you must find from the evidence in the case, and beyond a reasonable doubt, that the gun spoken of in the indictment, with which said Jackson Fastbinder is charged in the indictment with having unlawfully, maliciously, and purposely shot at Hiram Lamborn, was then loaded with powder and leaden balls; and unless the proof shows this beyond a reasonable doubt, you must find the defendant not guilty on either of said counts. But that you may so find that said gun was so loaded with powder and leaden balls, it is not necessary that this should be proven by positive evidence. It will be enough to establish this point if all the circumstances of the case should satisfy you beyond a reasonable doubt that said gun was so loaded with powder and leaden balls. If you find from the evidence that said Jackson Fastbinder then said that he would shoot said Hiram Lamborn, and got the gun and did shoot it off at him, you have a right to take him at his own word, and to infer and find that he had the means to carry out his threat, and that said gun was at that time loaded with powder and leaden balls, if you see proper;" to which charge as given the plaintiff in error excepted.

The motion for a new trial was overruled and the plaintiff was sentenced to the penitentiary upon the verdict.

Error is now prosecuted to reverse this judgment.

Johnson, C. J.: We need not notice the refusal to charge as requested, for the reason that the charge as given is a statement of the

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same proposition with an additional instruction to be noticed.

The charge as given after stating that it was the duty of the State to make out beyond reasonable doubt that the gun was loaded with powder and leaden balls, and that unless the proof showed this fact they must find the defendant not guilty, then added: "But that you may so find the gun was so loaded with powder and leaden balls it is not necessary that it should be proven by positive evidence; it will be enough to establish this point if all the circumstances of the case should satisfy you beyond a reasonable doubt that the said gun was so loaded with powder and leaden balls. If you fin dfrom the evidence that said Jackson Fastbinder then said he would shoot said Hiram Lamborn, and got the gun and did shoot it off at him, you have a right to take him at his own word, and to infer and find that he had the means to carry out this threat and that said gun was at the same time loaded with powder and leaden balls, if you see proper."

To the last clause of this charge objection is made.

That it is objectionable is clear to the minds of a majority of this court.

After correctly stating that it was the duty of the jury to find that the gun was so loaded, and that this might be done upon positive or circumstantial evidence, they are told that they might convict, if they saw proper, by inferring from the previous threat made to shoot' that the gun was so loaded. In other words, they might be satisfied beyond a reasonable doubt that the gun was loaded with a leaden ball because the plaintiff in error threatened to shoot Hiram Lamborn, and immediately thereafter got the gun and shot it off at him.

We do not think this threat to shoot, followed by shooting the gun off, is sufficient to satisfy the jury, beyond a reasonable doubt, that the gun was loaded with a bullet or other deadly missile; and it seems to us that to draw such an inference from a mere threat in the heat of an angry and violent altercation, in which each was trying to overdo the other, was unwarranted; indeed the very violence of this altercation and the close proximity of the parties at the time of the shooting, and the failure to make the threat effective, though there was ample opportunity if he intended to kill him, would lead to the equally reasonable inference that it was an idle threat rather than a serious one. Be this as it may, and while this threat may be properly regarded as a circumstance tending to show an intention to take life, yet it is insufficient to satisfy the jury beyond a reasonable doubt of this material allegation, is not a circumstance from which the jury could necessarily infer that the gun was loaded.

The legal presumption of innocence can be overcome only by full proof such as will exclude all reasonable doubt of the guilt of the accused, and where a criminal charge is to be proved by circumstantial evidence the proof ought to be not only consistent with the prisoner's guilt, but inconsistent with any other rational conclusion.

From the circumstances developed in the evidence it would not be irrational to infer that the threat and the shooting were intended to frighten away from his premises those who were making an attack upon him. Under such circumstances we think it the duty of the State to have shown to the satisfaction of the jury that the charge in the indictment as to the manner in which the gun was loaded must be established either by positive or circumstantial evidence, otherwise the defendant should be acquitted. 2 Bishop's Criminal Procedure, section 652, note 2; 1 Archbald Cr., Pl. & Ev., 885, 887 and note, 890 and note; Weston's case, 1 Leach, 247.

[To appear in 42 Ohio St.]

Taking Recognizance of Prisoner after Verdict of Guilty and before Sentence.

HAMPTON ET AL. V. OHIO.

Supreme Court of Ohio, Oct. 7, 1884.

1. In a criminal case, "except for capital offences where the proof is evident or the presumption great" (Const., Art. 1, § 9), after a verdict of guilty and before sentence, the court may, in its discretion, take a recognizance for the appearance of the prisoner to abide the judgment of the court.
2. After failure to so appear, and on forfeiture of the recognizance, the sureties are liable on the recognizance.

ERROR to the District Court of Gallia County.

William G. Hampton was indicted in Gallia county for burglary and grand larceny. He was tried and convicted of burglary.

When the jury returned into court with their verdict the defendant was in court; on the rendition of the verdict of guilty he was ordered by the court into the custody of the sheriff, and the sheriff so took and held him.

The journal entry in the case reads as follows:

"And thereupon the defendant, by his counsel, gave notice of a motion for a new trial; motion filed. And thereupon personally came the defendant, William G. Hampton, and with him personally came also John T. Hampton and John B. Clendinen, before the clerk of this court, and who each jointly and severally

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acknowledged themselves to owe the State of Ohio the sum of two thousand dollars ($2,000), to be levied of their goods and chattels, lands and tenements, if default be made in the condition following, to wit: That if the said William G. Hampton shall personally be and appear before this court on Thursday, March 22d, A. D. 1883, and from day to day thereafter when called, and abide the judgment of the court thereon on said indictment, and not depart without leave, then this recognizance shall be void, otherwise to be and remain in full force and effect in law. Thereupon the motion for a new trial in this cause is set down for hearing on Thursday, March 22d." This was during the same term.

William G. Hampton, until so ordered into the custody of the sheriff, was under a $500 bond for his appearance in the case.

William G. Hampton did not appear in court on the 22d day of March, but left the State and remained absent. The recognizance was forfeited at that term of court.

Action on this recognizance was brought and judgment rendered against the plaintiffs in error, John T. Hampton and John B. Clendinen; and this judgment was affirmed by the district court; and plaintiffs in error now seek to reverse the judgment below.

FOLLETT, J.: The plaintiffs in error seek to avoid liability on the recognizance, on the ground that the court had no power to take the same and permit the prisoner to go out of the custody of the sheriff.

The recognizance was the mode by which W. G. Hampton was taken from the custody of the sheriff and delivered to the plaintiffs in error, who thereby became entitled to his custody, and they were responsible for his appearance in court as per the terms of the recognizance; and at any time before default they could have taken him by force and surrendered him.

By the common law all offences, including treason, are bailable, though the high crimes are not of right, but only in the discretion of the court. 1 Bac. Ab., 588-596; Reg. v. Barroneq, Dears., 51; 1 Bish. Cr. Pr., § 256.

There was complaint that this judicial discretion was abused to the great damage of prisoners, even by Lord Mansfield; and, to guard as far as possible the rights of individuals, the people of Ohio placed in her constitution, § 9 of the Bill of Rights, the following: "All persons shall be bailable by sureties except for capital offences where the proof is evident or the presumption great."

This fundamental provision the laws and the courts carefully guard.

The only other restrictions upon the exercise of this power are the following statutes:

In cases of misdemeanor, the Revised Statutes, by §§ 7321 and 7322, provided that the execution of a sentence or judgment may be suspended on giving a proper recognizance; and, in cases of felony, the Revised Statutes, § 7325, provide: "When a person is sentenced for a felony, and execution of the sentence is suspended, the court shall order him into the custody of the sheriff to be imprisoned until the case is disposed of."

The power to admit to bail is amply given to the courts, and is incidental and necessary to the administration of justice; and this power is not taken away until the prisoner, found guilty of a felony, has been sentenced.

Thus it is clear that after conviction and until sentence, the court has power to admit to bail. The object of bail is to secure the appearance of the one arrested when his personal presence is needed; and, consistently with this, to allow to the accused proper freedom and opportunity to prepare his defence. The punishment should be after the sentence.

We do not say that after a verdict of guilty of felony, the prisoner, on tendering sufficient bail, can demand as of right his discharge from the sheriff's custody, pending his motion for a new trial; we only say, the court, in the exercise of a wise, judicial discretion, may so admit to bail.

The court might be satisfied that the testimony did not warrant the verdict of guilty, or that the prisoner's life would be endangered by his imprisonment. This position is established by numerous authorities, both English and American, some of which are cited in 1 Bishop on Criminal Procedure, § 256. The case of State v. Levy, 24 Minn., 362, fully sustains this case.

See, also, Ohio v. Summons, 19 Ohio, 139, where it is held that: "The court will not, as a matter of course, admit to bail because the jury in a trial for murder have not agreed upon a verdict. If the evidence exhibited on the hearing of the application be of so weak a character that it would not sustain a verdict of guilty against a motion for a new trial, the court will admit to bail." And our laws do not prohibit this power until after sentence. Rev. Stats., § 7325. And in all cases of felony, after verdict of guilty, the court, on application to admit to bail, will take into account the verdict rendered in the case, and in the light of all the facts, can administer justice by a due exercise of judicial discretion and legal power.

In this case the court had power to take the recognizance, and the plaintiffs in error are bound by their obligation.

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Domicile of Wife in Divorce Cases.

It was recently held by the Illinois Appellate Court, in the case of Derby v. Derby, 14 Bradw., 645, that a wife, after the commission by her husband of an offence or injury which entitles her to a divorce, is under no further legal obligations to make his residence or domicile hers, but is, for all the purposes of seeking redress under the statute in relation to divorce, at liberty to acquire or establish for herself a residence or domicile separate from his, and if such residence has in it the proper elements of permanance, and is acquired in good faith, it is sufficient to authorize a decree of divorce, although the residence and domicile of the husband may be in another and a foreign jurisdiction. The court say, that "it is a familiar and well recognized rule of law, that marriage creates a unity of parties which gives them one domicile, and as the husband has the authority to determine where that domicile shall be, the wife's domicile as a consequence follows that of her husband. This rule, though artificial and founded upon the theoretic identity of the persons and interests of the husband and wife, is doubtless of the highest importance to society, in that upon it rests, to a great degree, the unity and integrity of families and homes. But while it should therefore be jealously adhered to, and enforced wherever it properly applies, we are fully authorized by both reason and authority in applying to it the maxim that where the reason of the rule ceases, the rule itself ceases. Whenever the law permits the wife to bring a suit against her husband for divorce, it ceases to regard the theoretic or ideal unity of their persons and interests, but recognizes the wife as having a separate existence and separate interests and rights, and accords to her the remedies appropriate to the situation in which she is placed. Respecting the wife's right to establish a separate residence or domicile, for the purpose of a divorce suit, see Turner v. Turner, 44 Ala., 437; Tolen v. Tolen, 2 Blkf. (Ind.), 407; Jenners v. Jenners, 24 Ind., 355; Rhyms v. Rhyms, 7 Bush (Ky.), 316; Harding v. Allen, 9 Greenlf. (Me.), 140; Goodwin v. Goodwin, 45 Me., 377; Harteau v. Harteau, 14 Pick., 181; Garner v. Garner, 56 Md., 127; Wright v. Wright, 24 Mich., 180; Pate v. Pate, 6 Mo. App., 49; Frary v. Frary, 10 N. H., 61; Payson v. Payson, 34 Id., 518; Hopkins v. Hopkins, 35 Id, 474; Yates v. Yates, 13 N. J. Eq., 280; Johnson v. Johnson, 4 Paige, 459; Irby v. Wilson, 1 Dev. & Bat., Eq. (N. C.), 568; Schonwald v. Schonwald, 2 Jones, Eq. (N. C.), 367; Calvin v. Reed, 5 Smith (Pa), 375; Ditson v. Ditson, 4 R. I., 287; Fickle v. Fickle, 5 Yerg. (Tenn.), 203; Schreck v. Schreck, 32 Tex., 518; Huckalby v. Huckalby, 35 Id., 620; Hubbell v. Hubbell, 3 Wis., 662; Gleason v. Gleason, 4 Id., 64; Phillips v. Phillips, 22 Id., 256; Shafer v. Bushnell, 24 Id., 372; Craven v. Craven, 27 Id., 418; Dutcher v. Dutcher, 39 Id., 651; Cheever v. Wilson, 9 Wall. (U. S.), 108.

Desperate Cases.

Professional ethics and the duty of an attorney often require that a desperate criminal, fresh from a most aggravated homicide, be defended. But neither professional ethics nor professional duty require that the attorney making such defence should resort to all the methods, stoop to all the subterfuges, known to the disreputable "Old Bailie" lawyer; when he sees that justice is done to his client, and a fair trial given to the culprit, his duty is ended. The methods which defeat justice and save the neck of a Berner may be a disgrace to the profession at large; but not more so, we fancy, than permitting a poor, cranky culprit who assassinated the chief executive of the land, to go a begging up and down the highways and by-ways of the country for counsel. It is granted that this was a "desperate case," but that fact does not relieve an honorable profession of the duty to see that there were competent counsel to look after the rights of the ill-fated defendant, for even he had rights to be protected. The fact that it was a foregone conclusion that anyone who took the case would be defeated, did not relieve of the incumbent duty. No *honorable* lawyer, in active practice, does, can, or expects to win all cases. All will now and then get a "desperate case." It is many times the *duty* of an attorney to accept a retainer in, and fight for, what he knows to be a desperate case. We grant that these occasions are rarities; they may not come more than once in a lifetime; to many attorneys they never come at all; but when they do come under such circumstances that it is an attorney's duty to accept them, he should be ready to do so without hesitation. But every attorney should remember that no cause and no exigency can make it his duty to swerve one hair's breadth from the path of rectitude and fair dealing; that the requirements of advocacy and the duties of a good citizen and an honest man never clash.

Respecting "desperate cases," Austin Abbott recently wrote in the *Daily Register:*

"A desperate case often makes the fame and fortune of the practitioner, but a series of desperate cases is not promising of success or prestige.

"A lawyer, who advanced early to the en-

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joyment of a large practice, on being asked to what he attributed his success, said, modestly —making no reference to the hard work that he had put into his preparations for trials—that he had made it a rule to discourage the bringing of actions in which he did not see a clear promise of success; and if doubt arose after he had brought an action or interposed a defence, he effected a compromise, if possible, never going into court unless he was confident of success.

"Undoubtedly, the reputation of general success is a good deal; but we are inclined to think that there is even more in that intelligent confidence in success which comes from a fair degree of this sort of caution.

"An experience with thoroughly studied causes, and the trial of only those which give assurance of success, begets a habit of cautious confidence and vigor, which stands the mind well in aid, in a desperate case.

"There is this curious thing about desperate cases, if they are honest ones, that the other side rarely knows how desperate they are. The doubt and uncertainty are very obvious to the attorney who is facing them, but the very fact that the adversary does not know how the attorney is going to succeed, creates an air of mystery that may beget timidity and failure in resisting the desperate case. There is nothing more common than a perfectly just cause, weak in technical but essential details, and the confidence of a very cautious man, who is accustomed to succeed, is often the only thing which can save such a case from defeat.

"Men who have won their prestige in the profession can afford to bear the burden of failure in particular cases better than those whose position is not assured; and whether it is good fortune for a young lawyer to receive a retainer in an apparently hopeless case, must depend chiefly on himself and what resources he has for dealing with it.

"The most common mistake is, perhaps, that of bringing the action or interposing the defence before securing the evidence. It is much pleasanter to investigate the law and serve a complaint, trusting that the facts will be forthcoming in due time; but the beginning of litigation is often the end of information; and that knowledge of the facts and command of the means of evidence which might have been secured by slow and quiet movement, searching for proofs and opening communications in the right directions, before a law suit had been commenced, is often the only method, and an unexpectedly successful method, of dealing with what, at the first blush, was a very unpromising controversy.

Uncontrollable Impulse as a Defense.

The debate arising in the Medico-Legal Society upon Mr. Clarke Bell's paper on "Madness and Crime," sets in a very clear light the question which is probably next in order in the discussions on proposed amendments of the law of criminal responsibility, viz.: whether uncontrollable impulse is a legal defense. The arguments in the affirmative are medical, but have already been accepted by some legal authorities, notably among them Sir James Stephen. It is in brief that there is a form of insanity, which without impairing the capacity of distinguishing between right and wrong and of knowing the quality of the wrong act about to be performed, yet overpowers or supersedes the will, so that the subject has no power to refrain from the act. This was asserted by the late Judge Edmonds in this State, in People v. Klein (1 Edm. Sel. Cas., 13, 26), but has since been overruled. The argument against recognizing this as a legal defense is briefly, that the existence of such a disease is not yet proved. There is as yet only an inferred disease, a disease supposed to exist because of the circumstances of the offense; and that in the present condition of our knowledge, the law cannot distinguish in examining by legal evidence the history of a past act, between such a supposed state of mental disease and those forms of criminal impulse or passion which are popularly designated by the same term—uncontrollable impulse.—*New York Daily Register.*

A WELL-KNOWN lawyer had a case in court the other day, in which he was for the complainant, claiming damages for a railway accident. He had three witnesses to his version of the story and he anticipated a sweeping verdict. His case was, that through some obstructions placed upon the track in the dark night, through the carelessness of the defendants, his client had met with severe injuries. He called in a most assured tone for his first witness. To his dismay this individual swore that it was bright moonlight and that everything on the track was visible. He withdrew him suddenly. Witness No. 2 was relied upon to controvert the first statement. He declared that the whole neighborhood was lit by the electric light, besides the moon. With decreasing assurance the lawyer called the third. He swore that it was daylight. Then the dazed attorney rose.

"I move, your honor, for a continuation of this case on the ground of surprise!"

"I grant it," said the judge, while a roar of laughter rose all round.

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Dealings with a Lunatic.

In Johnson, as committee, etc., v. Stone et al. Supreme Court of New York (*N. Y. Daily Register*, November, 1884), Cornelius Seguin Johnson, in January, 1881, purchased of defendants 5,000 shares of Jonos Bonanza Mining Co. stock for $50,000. Two weeks afterward a sheriff's jury, on an inquisition, decided that Johnson had been of unsound mind for over two months. Then his committee, Francis E. Johnson, brought suit against Stone and Done to recover back the money, after the stock had been tendered back to the defendants. Judge Van Brunt directed issues of fact, to be tried before a jury, as to whether at the time of the sale and transfer of these shares, and the payment of them by Johnson, he was a lunatic. The jury after a lengthy trial decided that he was. Then the suit came for trial. A decision was rendered that although it did not appear that defendants had any knowledge or notice that Johnson was a lunatic, or that there was any unfair dealing on the part of the defendants, the money must be repaid, the transaction not being for the benefit of the lunatic, and as the defendants could have been placed in *statu quo* when the stock was tendered back. The stock was of little or no value.

NOTES OF RECENT DECISIONS.

Partnership: Interest in as subject of Pledge.—A. borrowed money of C., and pledged him all his interest in a prospective limited partnership, A. to remain in possession of the interest, but to make an assignment thereof to B upon demand. This assignment was not made, and A. died insolvent. The limited partnership was duly formed and wound up, paying off all its outside creditors; but P., one of the partners, filed a partnership bill and obtained a decree against the other partners, making them all, including A.'s estate, jointly and severally liable. The fund, being the principal and profits of the partnership interest, was claimed by P. as a partnership creditor to the exclusion of C., and by C. as pledgee of A.'s interest to the exclusion of P. There may be a present pledge of an interest in a future limited partnership which will vest an equitable interest in the pledgee, although the pledger is to remain in possession of the interest until the pledgee shall demand an assignment from him. That, as such pledgee, C. should take to the exclusion of P. to the amount of principal and interest advanced by him on such pledge, and that as to the balance, C. and P. should take *pro rata*. [Collins' Appeal. Sup. Ct. Pa. Pittsb. Leg. Jour., Sept. 24, 1884.]

Slander: Ambiguous Words; Foreign Language.—In action for slander, if the application or meaning of the words is ambiguous, or the sense in which they were used is uncertain, but they are capable of the defamatory meaning charged, it is for the jury to determine, upon all the circumstances, whether they were applied to the plaintiff, and whether used in the defamatory sense alleged.

Where the slanderous words contain a phrase or word in a foreign language, which, in common parlance among the people who speak that language, has a meaning somewhat different from its definition by lexicographers, it is competent to prove that it is commonly used and understood by them in that sense. Where the slanderous charge is not made in direct terms, but by equivocal expressions, insinuations and gestures, it is competent for witnesses who heard and saw them to state what they understood by them, and to whom they understood them to be applied. [Blakeman v. Blakeman; Sup. Ct. of Minn., Jan., 1884.]

Statute of Limitations: Absence from State.—If a debtor is out of the State when the cause of action accrues the statute of limitations does not begin to run until his return to the State. This rule applies equally to resident and non-resident debtors, and the time of absence of either of them from the State is not to be counted as part of the time limited for the commencement of such action. [Whitcomb v. Keator; S. C. Wis., Feb., 1884.]

Larceny: Wrongful Conversion of Hired Property.—One hiring a horse and selling it before the journey is performed, or sells it after, before it is returned, commits no larceny when the felonious intent came on him subsequent to receiving it into possession. [Morrison v. State; Court of App. of Texas, Oct. 25, 1884. 4 Tex. L. Rev., 280.]

The Courts.

United States Supreme Court.

JAN. 19, 1885.

John Lowell, jr., of Boston, Mass., and Frank T. Brown, of Washington, D. C., were admitted to practice.

Nos. 127 and 128. The Consolidated Safety Valve Co., &c., v. The Crosby Steam Gauge and Valve Co. Decree reversed with costs and cause remanded. Opinion by Mr. Justice Blatchford.

Nos. 1170 and 1171. The U. S. v. John M. Mueller, and John M. Mueller v. The U. S. Judgment affirmed. Opinion by Mr. Justice Blatchford.

No. 878. The Cent. R. R. Co, of New Jersey et al. v. Alfred Mills et al., surviving executors, &c. Opinion by Mr. Justice Gray.

No. 873. The Northern Liberty Market Co. v.

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John R. Kelly. Judgment reversed with costs and cause remanded with directions to enter judgment for plaintiff on the twenty-first and twenty-second counts. Opinion by Mr. Justice Gray.

No. 1138. W. Fleet Steele, to use of the Corn Exchange National Bank, v. The United States. Judgment affirmed. Opinion by Mr. Justice Woods.

No. 1235. Rudger Clawson v. The U. S. Decree affirmed. Opinion by Mr. Justice Field, Mr. Justide Miller and Mr. Justice Harlan dissenting.

No. 119. The Independent School District of Ackley v. F. G. Hall. Affirmed with costs and interest and cause remanded to the Circuit Court of the United State for the eastern district of Iowa, Opinion by Mr. Justice Harlan.

No. 855. John T. Cardwell v. the American River Bridge Co. Decree affirmed with costs. Opinion by Mr. Justice Field.

No. 1247. Henry G. Bicknell v. Sprague Comstock. Judgment reversed with costs and cause remanded. Opinion by Mr. Justice Miller.

No. 156. Francis Dodge et al. v. Thomas Knowles Ordered for reargument either orally or in print on or before the 1st of March next. Printed arguments must be filed by that day.

No. 8. Original. Ex parte, in the matter of Ellis G. Hughes, petitioner. Leave granted to file petition for writ of mandamus and rule to show cause granted, returnable on the first Monday of March next.

No. 853. Wm. H. Robertson, collector. &c., v. Richard F. Downing et al. Dismissed with costs.

No. 1259. Charles Steinmetz, treasurer, &c., v. The Nevada Bank of San Francisco. Docketed and dismissed.

No. 1194. The St. Louis & San Francisco R. R. Co. v. Wm. C. Wilson. Advanced pursuant to thirty-second rule.

Ex parte, in the matter of Benjamin F. Bigelow, petitioner. Motion for leave to file writs of habeas corpus and certiorari submitted.

No. 1037 Edward Reilly v. Louis Zechenderf et al. Dismissed, each party to pay his own costs in this court.

No. 1112. Jonn M. Stone et al., &c., v. The Farmer's Loan and Trust Co.

No. 1113. Same v. The Ill. Cent. R. R. Co.

No. 1114. Same v. N. O. & Northeastern R. R. Co. Assigned for the second Monday of March next.

No. 40. The Cooper Mfg. Co., of Mt. Vernon, O., v. J. W. Ferguson et al. Submitted.

No. 170. Martha E. Young v. John Enslie et al. Dismissed with costs.

JAN. 20, 1885.

No. 1115. Alfred Sully v. Jas. M. Drennan et al.

No. 1116. Same v. Wm. R. Manning.

No. 1117. Same v. Wm. R. Matthews. Submitted.

No. 171. Chauncy D. Spaids v. Dennis N. Cooley. Argument concluded.

No. 172. A. T. Ankeny v. Horatio L. Sparks et al. Dismissed with costs pursuant to 16th rule.

No. 176 Arthur Norrington, &c., v. James A. Wright et al., &c. Argued.

JAN. 21, 1885.

Thomas F. Hargis, of Louisville, Ky., Caleb Bentley Matthews, of Cincinnati, O., and Frankland Jannus, of Washington, D. C., were admitted to practice.

No. 176. Arthur Norrington, &c., v. James A. Wright et al., &c. Argument concluded.

No. 177. Richard D. Lancaster v. Henry E. Collins. Continued per stipulation.

No. 178. James Sargent v. Hall Safe and Lock Co. et al. Argued.

JAN. 22, 1885.

Upon the meeting of the court Mr. Justice Miller, acting chief Justice, made the following announcement:

"The court is informed this morning of the death, during the night, of the wife of our associate, Mr. Justice Matthews.

"Though not unexpected, the event is none the less one by which the members of the court are all deeply affected; both on account of our regard for the deceased, and our sympathy for our brother in his affliction.

"We shall attend in a body such funeral ceremonies as shall take place in this city, and, as a further testimony of the sense of our common loss and our sympathy with the family of the deceased, this court will adjourn until Monday next."

SUPREME COURT OF THE DISTRICT OF COLUMBIA.

GENERAL TERM.

Jan. 19, 1885.

Gibbons v. District. Bill dismissed.

Belmont v W. & G. R. R. Co. Motion to dismiss appeal allowed.

Young v. Young. Judgment modified.

Jan. 22, 1885.

Strong v. Totten. Judgment below affirmed.

Keyser v Hitz Motion for a rehearing denied.

Ebbinghaus v. Killian. Decree allowed.

Gibbons v The District of Columbia Decree dismissing bill approved

Sunderland & Hillyer v. Kilbourn & Latta. Decree of Jan. 22d, instead of decree entered Jan. 9 Neil Dumont appointed Commissioner in Chancery.

IN EQUITY.—New Suits.

Jan. 15, 1885.

9290. Lucy R. Prosperi v. James A. Prosperi For divorce. Com. sol, J. A. Clarke.

Jan. 17, 1885.

9291. Amanda Hurley v John P. Hurley. For divorce. Com. sol, M J. Ford

9292 Joseph Williams v. John Sherman. To set aside deed of trust. Com. sol., F T. Browning.

Jan. 19, 1885.

9293. Samuel C. Reid v Josephine R. Reid To annul certain deeds, &c. Com. sol, Hunton & Chandler.

9294. Clara J. Heyland et al. v Marshall Wallach et al. For substitution of trustee Com sol, I Williamson.

9295. Abraham Kroon v. Sarah Kroon. For divorce. Com. sol, J. A. Smith.

Jan. 20, 1885.

9296. Wm. Burgess et al. v. Herman Hollander et al. For appointment of receiver. Com sols., Edwards & Barnard.

9297 Helen J. Durfee v George H Durfee. For divorce. Com. sols, Shellabarger & Wilson.

9298. Thomas J Fisher v William Sharon et al To remove cloud from title Com. sols, Hillyer & Ralston.

9299 Emeline Chew v. Phillip Chew. For divorce. Com. sol., W. A Meloy

9300. Maud Venable v. Clem R. Venable. For divorce. Com. sol., Mason N. Richardson

9301 Brainard H. Warner v Samuel Ker et al. To subject lots to payment of judgment. Com sol., E H Thomas.

Jan. 21, 1885.

9302. Thomas H Morgan et al. v. Peter Bolden et al. To sell Com sol., same.

9303. Julia A. Smith v. Maria Jeffries. To quiet and vest title. Com. sol., W. R. Woodward.

Jan. 23, 1885

9304 Wm. Sharon v. John R Tucker et al. To quiet title. Com sols, Hillyer & Ralston.

9305. Thomas J. Fisher v. same. To quiet title, Com, sols., same.

Jan. 24, 1885

9306. Linda H. Ball v. John F Olmstead et al. To substitute trustee. Com. sols., Webb and Totten.

CIRCUIT COURT.—New Suits at Law.

Jan. 16, 1885.

25913. Raphael Knopf v. John Hancock. Note, $150. Piffs. attys., Merrick & Morris.

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Jan. 17, 1885.

25914 John Fitzmorris v. Dennis Looney. Judg't of Justice Helmick, $63 07 Pliffs. attys, Newton & Berryman.

25915 Chas J Stott et al. v. John V. Lewis. Note, $250 Pliffs attys., Linton and Darlington.

Jan. 19, 1885.

25916 Thomas J. Fisher & Co v. Lizzie Morrice. Certiorari Defts. atty., H. B. Moulton.

25917 Henry B Arnold et al v. Louis Heilbrun. Note, $625.58. Pliffs. atty., F. W. Jones.

Jan. 20, 1885.

25918 W. M. Galt & Co. v. Lucy H. Smith. Judgment of Justice Taylor, $22

25919 R. A. Phillips v. L. A. Walker. Judg't of Justice Hall, $100

25920. Edward D. Clapp v. Wm. Wall. Certiorari. Detts. attys, Hagner & Maddox.

Jan. 21, 1885.

25921. Walter Brown v. Albert Wood et al. Certiorari. Defts. atty., A. K Browne.

25922 John H. Yakey v. John W. Shaw. Appeal. Pliffs. atty, E H Thomas.

25923 James France v. Albert E. Boone. Note, $250. Pliffs attys., Hagner & Maddox.

Jan. 23, 1885.

25924. Elias Solomon v. Albert Rupp. Judg't of Justice Taylor, $49.21.

25925. R D. Ruffin v. Helen L. Sumner. Replevin. Pliffs. attys, Hewlett & Shea.

25926. B. B. Jolley v, Mary F. Betts. Issues from probate. Pliffs atty., W. Willoughby

Jan. 23, 1885.

25927 Henriette Kennedy v. Reuben M. Deaver. Appeal. Defts atty, E. H. Thomas.

25928. Notley Anderson v. Charles Loszkam. Appeal. Defts. atty, C. A. Walter.

PROBATE COURT.—Justice Cox.

Jan. 24, 1885.

In re orphans of Benj J. Wilkay; order appointing James P. Lewis guardian, and bond fixed at $500.

Estate of Thomas L Hume; citation against the administrator returned served.

Estate of Mary G Harris; account of sales of personal estate returned by administrator.

Estate of Leonidas G. Knowles; will and codicil proved.

Estate of Catharine Robinson: petition of James Riley asking the court to protect the rights of Annie Riley and Andrew Bosland.

Estate of Chas. D Gilmore; Samuel R. Bond and Job Barnard qualified as administrators.

Estate of Hattie H Morse: proof of publication filed.

Estate of Margaret Waters; proof of publication filed.

Estate of Luther Martin; will admitted to probate and record and letters of administration issued to James S. Edwards on bond o' $30,000

In re will of Levi S. Thomas; will proved by two witnesses.

In re will of Archibald G. Spalding; will proved by two witnesses

Will of Julia A Roberts filed for probate and record.

Estate of Joseph D. Harris; bond of executor signed by one surety.

In re N G. Hulse: H. A. Hall bonded as guardian in the sum of $4.000.

In re Leo Johnson; order appointing Thomas E. Waggamas guardian.

Estate of Hattie H Morse; petition of Thomas E. Waggaman for letters of administration filed.

Estate of John Feldman; order of publication

In re L. P Crouse, minor; order appointing Mary C. Crouse guardian and bond fixed at $150.

Estate of Catherine Robinson; order of publication.

Estate of Margaret Waters; letters of administration granted Collins Crusor: bond, $600.

Estate of E W. Hager; letters granted John Trimble on bond of $3,000.

Legal Notices.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia. hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of William Middleton, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of January, 1885.

CATHERINE MARY MIDDLETON,

RICHARD P. EVANS, Solicitor. 4-3 Executrix.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business, January 24, 1885

In the matter of the Will of Levi S. Thomas, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased, has this day been made by Charlotte R. Thomas

All persons interested are hereby notified to appear in this Court on Friday, the 20th day of February next, at 11 o'clock, a. m., to show cause why said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.

Test: H. J. RAMSDELL, Register of Wills.

WM. H. BARTON, Solicitor. 4-3

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Luther Martin late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23d day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23d day of January, 1885.

JAS. S. EDWARDS,

Administrator, c. t. a.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 22d day of January, 1885.

HELLEN J. DURFEE v. GEORGE H. DURFEE. } In Equity, No. 9297.

On motion of the plaintiff, by Messrs Robert R. Shellabarger and Charles S. Wilson her attorneys, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice, &c.

A true copy. Test: 4-3 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Sara P. Copeland. late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of January next: they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of January, 1885.

EDWIN B. HAY,

4-3 Administrator.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Mattie Lathrop, late of the District of Columbia, dec'd

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of December, 1884.

1 HENRY M. BAKER, Executor.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Davis Richards, late of the United States of America, decd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of December, 1884.

CALDERON CARLISLE,

1 Administrator.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 20, 1885.

In the matter of the Will of Levin M. Powell, late of the District of Columbia, deceased

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Charles D Drake and William B Webb.

All persons interested are hereby notified to appear in this court on Friday, the 30th day of January next, at 11 o'clock a m., to show cause why the said Will should not be proved and admitted to probate and Letters Testamentary on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once in the Washington Law Reporter and three times in the National Republican previous to the said day.

By the Court. W. S COX, Justice.
Test: 4-1 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 24, 1885.

In the matter of the Estate of John Feldman, late of Washington City, D. C., deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Benjamin F. Rittenhouse, of the District of Columbia.

All persons interested are hereby notified to appear in this court on Friday, the 20th day of February next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

By the Court. W. S. COX, Justice.
Test: 4-3 H. J. RAMSDELL, Register of Wills.
GORDON & GORDON, Solicitors.

THIS IS TO GIVE NOTICE.

That the subscribers of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration c t. a on the personal estate of Chas D. Gilmore, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 23d day of January, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 23d day of January, 1885.

SAM'L R. BOND.
4-3 JOB BARNARD,
Administrators, c t. a.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, this 24th day of January, 1885.

JAMES B. HOUSTON vs. MARY T. GARLAND ET AL. } In Equity, No. 8982.

Ordered, this 24th day of January 1885, that the offer of Ellen R. Goldsborough to purchase at private sale the east 24.23 feet front by depth of original lot 6, in square 121, and improvements, this day reported by the trustees herein, be, and the same is hereby accepted, and that said sale be, and is hereby ratified and confirmed, unless cause to the contrary be shown on or before the 24th day of February, 1885.

Provided, a copy of this be published once a week for three successive weeks prior to said day in the Washington Law Reporter.

The report states the amount of sales at $5.500.

W. S COX, Justice.
A true copy. Test: 4 R. J. MEIGS. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphaos' Court Business. January 24, 1884.

In the case of Charles M. Matthews, Executor, of Catharine J Mazruder, deceased, the Executor aforesaid has, with the approval of the court, appointed Friday, the 27th day of February, A. D. 1885, at 11 o'clock a m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor, will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 4 H. J. RAMSDELL Register of Wills.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber of Pittsburgh, Pennsylvania, hath, obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration c t. a on the personal estate of Alexander Murray, late of the U. S. Navy, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 13th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of January, 1885.

4-3 GEO. W, GUTHRIE.
WORTHINGTON & HEALD, Sol'rs. Adm'r c. t. a.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 21st day of January, 1885.

THOMAS J. FISHER. v. WILLIAM SHARON ET AL. } No. 9298. Eq. Doc. 24.

On motion of the plaintiff, by Messrs. Hillyer & Ralston, his solicitors, it is ordered that the defendants, Wm. Sharon and Sarah Althea Hill, otherwise Sarah Althea Sharon, cause their appearance to be entered herein on or before the first rule day, occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.
A true copy. Test: 4-3 R J. MEIGS, Clerk

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 21st day of January, 1885.

ANN MARIA BOOTH, Complainant, v. CHARLES E. FRASER ET AL., Defendants. } No. 9185. Eq. Doc. 24.

On motion of the plaintiff, by Messrs. Linton & Darlington, her solicitors, it is ordered that the defendant, Martha Booth, cause her appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.
A true copy. Test: 4-3 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 20, 1885.

In the matter of the Estate of Jane Rutledge, late of Niles Berrien, Co., Michigan, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Thomas W. Rutledge, who requests that letters be issued to Charles A. Chapin.

All persons interested are hereby notified to appear in this court on Friday, the 13th day of February next, at 11 o'clock a. m., to show cause why the said Letters of Administration, on the estate of the said deceased should not issue to Charles A. Chapin as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.
Test: H. J. RAMSDELL, Register of Wills.
JAMES R. COOK and N. DUMONT, Solicitors Rooms 3 & 4, 1331 F Street, N. W, 4-3*

IN THE SUPREME COURT OF THE DISTRICT OF Columbia

FRANCIS H BROWN v. GEORGE A. BROWN ET AL. } Equity No. 9011. Docket 24

Fendall E Alexander, the trustee herein, having reported that he has sold part of lot numbered seven (7) in square numbered Two Hundred and Eleven (211), as described in the bill of complaint herein, containing 3230 square feet, at eighty (80 c) cents per square foot, aggregating the sum of $2,584 00 to one Anna E. Tracy, and that said purchaser has offered to assume the payment of the taxes and assessment thereon with the accumulated penalties and interest thereon, amounting to the sum of $781.35, as set forth in his said report, and to pay the balance of said purchase money, to wit: $1.802 65, as stated in said report; it is, this 21st day of January, A. D 1885, by the Court, ordered and decreed, that said offer be, and the same is, hereby approved, and said sale be, and the same is, hereby ratified and confirmed, unless cause to the contrary thereof be shown herein on or before the 21st day of February, A. D. 1885.

Provided a copy of this order be published once a week for three successive weeks, before said last mentioned day, in the Washington Law Reporter.

By the Court. W. S. COX, Justice.
A true copy. Test: 4-3 R. J. MEIGS, Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

FRANK L. BEACH v. COLUMBUS BEACH ET AL. } No. 8464. Eq. Doc. 22.

William W. Boarman, trustee, having reported to the court that on the 30th day of December, A. D 1884, he sold to F. Bernheimer part of Sub-lot 19 in Square No. 265, fronting on 14th street southwest twenty (20) feet and running back thirty nine (39) feet four (4) inches at and for the sum of $305:

It is by the court this 2d day of January A. D. 1885, ordered, adjudged and decreed that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 3d day of February, A. D. 1885; provided a copy of this order be published once a week for three successive weeks prior to said last-mentioned date in the "Washington Law Reporter."

W. S. COX, Justice.
A true copy. Test: 1 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, this 31st day of December, 1884.

JAMES B. HOUSTON v. MARY T. GARLAND ET AL. } In Equity, No. 8982.

This cause coming on to be heard upon the supplemental report of the trustees, for the sale of the real estate in the proceedings mentioned, this day filed, it is thereupon and upon consideration thereof, this 31st day of December, 1884:

Ordered, That the offer to purchase Lots five and six in Square forty-two at private sale at and for the price of fifteen hundred dollars cash, as reported by said trustees be and the same is hereby accepted: and that the said sale be and the same is hereby ratified unless cause to the contrary be shown on or before the 31st day of January, 1885; provided a copy of this order be published in the Washington Law Reporter once in each of three successive weeks before said date.

The report states the amount of sales to be $1500.

W. S. COX, Justice, &c.
A true copy.. Test: 1 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

ALEXANDER ET AL. v. BOULDIN ET AL. AND BOULDIN ET AL v. BARNACLO. } Nos 1054 and 5701 Eq Docs. 8 and 17

This cause coming on this 31st day of December, 1884, upon the trustee's report of sale filed in the cause, and upon consideration thereof, it is hereby ordered and adjudged that the sale to James S. Nash of part of Lot 2 in subdivision of A. Bouldin, in Square 525, be and is hereby ratified and confirmed, unless cause to the contrary be shown on or before the first day of February, 1885; provided a copy hereof be published once a week for three weeks.

By the Court. W. S COX, Justice.
True copy. Test: 1 R. J. MEIGS, Clerk, &c.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, this 2d day of January, 1885.

HENRY FETTER v. JOHN BUCHANAN ET AL. } In Equity, No 9107.

This cause coming on to be heard upon the report of the trustee of the sale made by him of the real estate in said cause mentioned, it is thereupon this 2d day of January, 1885:

Ordered, That said sale be and the same is hereby ratified and confirmed unless cause to the contrary be shown on or before the 2d day of February, 1885; provided a copy of this order be published in the Washington Law Reporter once in each of three successive weeks before said day.

The report states the amount of sales to be $1125.

W. S. COX, Justice.
True copy. Test: 1 R. J MEIGS, Clerk

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John Taylor, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of December, 1884.

EMANUEL M. HEWLETT, Administrator.
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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

THEODORE A. MILLS ET AL. v. SUSAN E MILLS ET AL. } 9042. Eq. Doc. 24.

Talmadge A. Lambert, Sidney T. Thomas and Charles C. Cole, heretofore appointed as trustees in this cause, having, reported that on the 4th day of December, 1884, they sold, in conformity with the decree heretofore made in this cause directing the same, lot numbered one on the plat of the estate of the Clark Mills, filed in said cause, for the sum of two thousand nine hundred and fifty dollars ($2,950), it is, this 6th day of January, 1885, ordered that said sale stand finally ratified and confirmed unless cause be shown against the same on or before the 6th day of February, 1885 Provided a copy of this order be published for three successive weeks prior to said day in the Washington Law Reporter

By the Court. W. S. COX, Justice.
A true copy. Test: 2 R. J. MEIGS, Clerk,

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business January 7, 1885.

In the case of Mary H Myers and Martin F Morris, administrators of John J Myers, dec'd, the Administrators aforesaid have, with the approval of the court, appointed Friday, the 30th day of January A. D. 1885, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrators will take the benefit of the law against them; Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test; 2 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 9, 1885.

In the case of Hosea B Moulton, Adm'r of George William Thompson deceased, the administrator aforesaid has, with the approval of the Court, appointed Friday, the 6th day of February A. D 1885 at 11 o'clock a. m, for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

Test: 2 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Holding a Special Term for Orphans Court Business. January 9th, 1885

In the case of Francis H. Stickney, administrator of Robert J. Powell, deceased, the Adm'r aforesaid has, with the approval of the court, appointed Friday, the 30th day of January, A. D 1885, at 11 o'clock a. m for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 2-3 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 6th day of January, 1884.

TAYLOE ET AL v. WARREN ET AL. } No 9269. Eq. Doc. 24.

On motion of the plaintiffs, by Mr. Wm. Tayloe Snyder, their solicitor, it is ordered that the defendants, Eugenia Phœbe Warren and George B Warren, her husband, Mary Calmes Perry, Thornton Tayloe Perry, Edward Tayloe Perry Estelle Tayloe Paine, John Paine, and Ogle Tayloe Paine, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.
A true copy. Test: 2-3 R. J. MEIGS, Clerk.

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Legal Notices.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration, on the personal estate of Agnes Bryant, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of January next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 12th day of January, 1885.
H. RANDALL WEBB,
3-3 Administrator.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Adaline Birge, late of Prince George's County, Md., deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of January next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 10th day of January, 1885.
3-3 ANNA B. SMITH.
NEWTON & BERRYMAN, Solicitors. Administratrix.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January, 12, 1885.
In the matter of the Estate of John Ashley, late of Staunton Station, Tenn deceased.
Application for Letters of Administration on the Estate of the said deceased has this day been made by Philip H. Sheridan, Lieutenant-General, U S. Army.
All persons interested are hereby notified to appear in this court on Friday, the 6th day of February next, at 11 o'clock, a. m, to show cause why the said will should not be proved and admitted to Probate, and Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. WALTER S. COX, Justice.
Test 3 H J RAMSDELL, Register of Wills.
JAMES LOWNDES, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 16th day of January, 1885.
HOPKINS ET AL. v. HOPKINS ET AL } No. 8963. Equity.
On motion of the plaintiff, by Mr. J. J. Johnson, their solicitor, it is ordered that the defendant, James Hall, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.
By the Court. W S. COX, Justice.
A true copy. Test: 3-3 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 17th day of January, 1885.
AMANDA HURLEY v. JOHN P. HURLEY. } No. 9291.
On motion of the plaintiffs, by Mr. M. J. Ford, her solicitor, it is ordered that the defendant, John P Hurley, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.
By the Court. W. S. COX, Asso. Justice.
True copy. Test: 3-3 R. J. MEIGS, Clerk

THIS IS TO GIVE NOTICE
That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of John Moore, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of January next; they may otherwise by law be excluded from all benefit of the said estate
Given under our hands this 13th day of January, 1885.
JOHN F. HANNA,
3-3 ANDREW B. DUVALL.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 2, 1885.
In the matter of the Will of Esther Ann Stott, late of the District of Columbia, deceased.
Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Frank T. Browning
All persons interested are hereby notified to appear in this court on Friday, the 30th day of January next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. WALTER S. COX. Justice.
Test: 1-3 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, January 17, 1885.
In the case of William H Veerhoff, Executor of Augusta Asmissen, deceased, the Executor aforesaid has, with the approval of the court, appointed Friday, the 6th day of February A. D. 1885, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
Test: 3 H. J. RAMSDELL, Register of Wills.
REGINALD FENDALL, Solicitor.

THIS IS TO GIVE NOTICE.
That the subscriber, of Washington, D. C., hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of administration on the personal estate of John T. Rickard, late of Hyattsville, Md, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 27th day of December next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 27th day of December, 1884.
3-3 LOUIS D. WINE.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 6th day of January, 1885.
NICHOL MAIN v. FLORENCE IRENE MAIN. } No. 9272. Eq. Doc. 24.
On motion of the plaintiff, by Mr. C. C. Cole, his solicitor, an affidavit of a disinterested witness having been filed that the defendant has been absent from the District of Columbia for more than six months, and one summons against her having been returned "not to be found" it is ordered that the said defendant do cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.
By the Court. W. S COX. Justice.
A true copy. Test: 2-3 R. J. MEIGS, Clerk

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business January 9th, 1885.
In the matter of the Estate of John Casey, late of the District of Columbia deceased.
Application for Letters of Administration on the estate of the said deceased has this day been made by Samuel Bieber, a creditor.
All persons interested are hereby notified to appear in this court on Friday, the 30th day of January, next, at 12 o'clock m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
W. S. COX, Justice.
Test: 2-3 H. J. RAMSDELL, Register of Wills.
LEON TOBRINER, Solicitor.

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Washington Law Reporter

WASHINGTON - - - - - - January 31, 1885.

GEORGE B. CORKHILL - - - EDITOR

MR. JUSTICE MILLER, of the United States Supreme Court, will begin his annual course of lectures on Constitutional Law before the National University this month.

IT IS surprising how often in this District one hears the remark to the effect that the District of Columbia is one of the safest places in the United States to violate the law, in whatever manner; and that no man will be convicted by any jury in this District, especially if he is on trial for defrauding the government. Now, remarks of this kind are probably heard in almost every judicial district; but it has become so very common in the District of Columbia as to call special attention to the fact. The effect of these assertions, which originally began, probably, from the remarks of some defeated prosecutors, has grown to such a great extent as to become very noticeable, and calls for condemnation in the strongest terms. The effect of all this is pernicious in this District than elsewhere, for here all such reports pass rapidly from one to another, and so soon reach all of those who are called to serve upon our juries. The juries come from the District of Columbia, and it does not extend over a very great extent. The men who serve upon them take their seats thoroughly imbued with these distorted ideas, and the indirect effect of this upon some juror who thinks to alter it all, causes a failure of such complete justice as the law assures to every one accused of a crime. And this hardship falls heavily upon the defendant on trial before such a jury, as, otherwise, a different finding might have been had. It is hardly possible, at present, to suggest a remedy for this pernicious and growing evil; but it is only our purpose at present to call attention to it, and the great injustice which must necessarily arise from this state of things, will be readily perceived.

BOOK NOTICES.

We have examined with a considerable degree of care and interest the initial number of the LAW QUARTERLY REVIEW, edited by Mr. FREDERICK POLLOCK, M. A., LL. D., and published by STEVENS & SONS, 119 Chancery Lane, W. C., London, whose agent for the United States is C. C. SOULE, Boston, Mass., from whom we received this number. The names of the authors of the articles contained in this number would alone satisfy one of the value of the matter therein contained. And the names of those who have promised their aid to the enterprise include a great number of the most eminent legal minds of the age. It is the purpose of the editor that this magazine shall prove valuable to the layman as well as to the lawyer, and his examination of it will prove the success in this. We have seldom had the pleasure of reviewing a law magazine at once so elegant, so scientific and so valuable, and we predict for it great success, both in this country and England. Its price (75 cents per number, or $2.75 per annum,) is much lower than any previous English periodical.

IN SCOTLAND and in most of the Catholic countries the year began with January 1. This date was fixed in 1582, after the alteration of the calendar by Pope Gregory. In most Protestant countries, except England, the new style was observed; but in England, under the old style, the new year began on the 25th of March. Scotland adopted the new style in 1600—England not until 1752.

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Supreme Court District of Columbia

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

JOHN BURNS

vs.

METROPOLITAN BUILDING ASSOCIATION.

EQUITY. No. 7445.

Decided November 10, 1884.
The CHIEF JUSTICE and Justices MAC ARTHUR and JAMES sitting.

The terms of a building association contract with its borrower or advancee, discussed and held not to be usurious.

THE CASE is stated in the opinion.

T. JESUP MILLER and R. B. LEWIS for plaintiff.

WM. HENRY BROWNE for defendant.

Mr. Justice JAMES delivered the opinion of the court.

The transaction out of which this suit grows was of the ordinary kind under the usual articles of these building associations, in which the borrower or advancee, whichever he may be called, receives a certain amount of money proportioned to the stock held by him under the rules of the association, and gives a bond, not for the repayment of the money, but binding him to do a specific thing, to wit, to pay upon each share of his stock two dollars monthly, and to do so until there shall have been realized a profit of fifty per cent. on the stock of the association. In addition to this bond, he gives also a deed of trust as a further security for the performance of his obligation. The trust authorizes the trustees in case of default in performance to sell the property, and in making their distribution of the proceeds to retain the amount of this advance or loan. The only positive and absolute obligation which the borrower or advancee enters into, is to pay two dollars a month for a period of time as yet unascertained.

In this case the complainant, who has filed a bill to restrain the trustees from selling this property under the trust, had received a certain advance and had made considerable payments. He then ceased, on the assumption on his part that the time had arrived, according to the contract, when no further payments could be required of him. One of the grounds upon which he claims relief is that the contract is *usurious*, and that he is not bound to perform it beyond the payment of the principal.

We have held in the cases of Pabst v. Building Association, 1 Mac A., 385, and in the case of Mulloy 2 Mac A., 574, that contracts similar to this were not usurious. It was contended, however, with a good deal of earnestness, that the opinions in those cases were *obiter dicta*, so far as they undertook to decide the question of usury; that the question was not involved in those cases, and that the court ought not to hold itself bound by them as a precedent.

For that reason we have looked into this contract, under the influence, however, of a strong feeling that unless the grounds for holding it to be usurious were very plain. we would not undertake to disturb what has been supposed, for so long a time, to be the attitude of this court.

We take it that usury is involved only when there is an absolute undertaking binding the person to do a certain thing, namely to pay back the principal of the loan, and, whether by contract or by some artifice, to pay usurious interest. Here there is no undertaking at all to repay the principal of this loan. The undertaking is to pay two dollars a month on this stock, one dollar of which, it is admitted, is payable as dues, and the other as a contribution to the profits upon the stock. But that undertaking is not to continue for any specific length of time. Its performance may continue a longer or shorter period, and if all of the borrowers, or parties upon whose stock money is advanced or loaned keep their promises, the period is shortened, because just so much sooner does the period arrive when the profits on the stock amount to the stipulated fifty per cent.

To the extent that the period is shortened by the performance of the contract, the amount to be paid is reduced, and the borrower receives in that way the benefit of his payments. There are two elements, therefore, for consideration. The borrower takes, in one case, a part of the benefit in the execution of the contract,

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not because the proceeds are distributed to him, but by shortening the period during which he shall pay. The other is, that the form of contract does not oblige him to continue paying for any specific length of time, and does not amount in itself, therefore, to an undertaking to repay this advance. It may happen that he may be discharged from the obligation to continue these payments before he shall have paid back the principal and the legal interest. The probability may be the other way, but the undertaking does not make it so.

The result, then, is that the contract is not in itself usurious. The borrower, it is true, has the privilege of discharging himself, at any time, from his absolute obligation to pay two dollars a month, by coming forward and settling up with the association, and the argument that this was an usurious contract was rested chiefly on the theory that such a settlement could not be had except upon the basis of usury. But even supposing that to be the case, viz.: that the settlement would involve the payment of more than the principal and legal interest. Yet it is not a settlement which the borrower is bound to make. He has the choice either to perform an obligation which is not in itself usurious, or discharge himself from its performance by selecting another mode of settlement. An alternative which a person may adopt from choice, not being an obligation, cannot itself be an usurious contract: it is only a method which he may adopt of discharging himself from another contract.

Again, the plaintiff comes here for equitable relief, and asks this court to interpose in his behalf, and I think we all agree that the principle fairly applies that he must perform his contract first. He informs us that he proposes to discharge himself from the obligation to pay two dollars a month by adopting the alternative that had been offered to him, and he cannot ask us to relieve him unless he is willing to perform and does perform this alternative. The result is that the account must be stated according to the contract between him and the association as exhibited in the constitution which is referred to in his deed of trust as a part of the contract, and which furnishes the evidence of it.

The conditions on which he may offer that settlement are expressed in article 15 of the articles of association, which provide that "any stockholder desiring to settle an advance shall be charged with the actual amount advanced to him, and credited with the amount of dues paid in upon the stock upon which such advance has been made, thereby cancelling said stock, and shall be allowed the same amount of interest on said payment of dues as is allowed to those shares withdrawn, on which no advance has been made; and upon the payment of the balance found to be due the association, he shall be entitled to a deed of release."

At the time when this transaction was initiated, the constitution provided, by the next article, that stockholders might withdraw, receiving back their dues, and ten per cent. profit. The constitution, as it is called, although it is only the articles of agreement between the members of a voluntary association, and not the members of a corporation, provide for its amendment by the vote of two-thirds of all the stockholders present at one of the regular monthly meetings. This was undertaken, it is said, at a regular monthly meeting. This proof of amendment was not produced, but by consent of the parties, the minutes were brought into court, they merely set out the general fact that the amendment reducing this ten per cent. profit on the dues paid in, to six per cent., had been passed. An accompanying affidavit set forth that it was done by a unanimous vote, and, therefore, of course, by a vote of two-thirds of all the stockholders present. This affidavit was admitted subject to any objections as to its force.

But even if it be conceded that the amendment was proven by competent testimony to have been adopted, its adoption would not alter the contract that had already been entered into. The provision of this constitution allowing amendments to be made in future, is not to be construed as authorizing two-thirds of the stockholders to alter a contract which had already been made. They might make future arrangements under it, but not

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change the existing rights of parties. Moreover, it is to be observed, that the amendment was not of this 15th article, but of the article specifically relating to persons who wish to withdraw entirely from the association. We construe this 15th article, therefore, as being unchanged, and requiring that the borrower or advancee, desiring to settle up, shall be credited the amount that he has paid in monthly on his stock; that is to say, the dollar a month, and ten per cent. on that and the balance he must pay. Now, if the plaintiff wants our assistance, he must perform either the contract he has entered into or the alternative he has adopted for discharging himself. The auditor has ascertained the amount required for settlement, calculating the interest at six per cent., but the account is easily recast by adding four per cent.

This was the obligation of the plaintiff when he commenced his suit, and as he has delayed the association by withholding payment, he must pay interest during that time.

The decree can easily be made up from these elements.

Common Carrier: Liability of Railroad Company on Contract to Carry Beyond Terminus; Shipping Receipt.—A railroad company that contracts to carry goods over its own and connecting roads, and deliver the same within a certain time at a destination beyond the terminus of its own line, is liable to the shipper for damages caused by delay in transportation over such connecting roads. Whether the contract of shipment provided for a carriage beyond such terminus is a question for the jury. Upon the determination of this question, the provisions of the receipt delivered by the carrier to the shipper are not conclusive upon the latter. [Pereira v. Central, etc., R. Co. S. C. Cal. Nov. 7, 1884. 4 W. C. Rep., 372.]

Compounding Felony: Destruction of Evidence of Forgery.—The delivery of a forged promissory note to the forger, upon payment by him, which he was authorized to make, with the intent to enable him to destroy and suppress it, and with the intent to hinder and prevent the prosecution of the forger, does not constitute the compounding of a felony. [Deere v. Wolff. S. C. Iowa. Oct. 24, 1884. 21 N. W. Rep., 168.]

United States Supreme Court.

No. 166—OCTOBER TERM, 1884.

ANNA M. PRICE, Widow of Alfred J. Price, JESSIE PRICE, STELLA PRICE, and ANNIE PRICE, Minors, by their mother and next friend, Anna M. Price, Plaintiffs in Error,

vs.

THE PENNSYLVANIA RAILROAD COMPANY, Operating the Western Pennsylvania Railroad.

In Error to the Supreme Court of the State of Penn'a.

Mr. Justice MILLER delivered the opinion of the Court, January 26, 1885.

A statute of Pennsylvania passed in 1851 makes the provision, now become common, for a recovery by the widow or children of a person whose death was caused by the negligence of another, of damages for the loss of the deceased.

A statute passed April 4, 1868, on that subject, provides that where any person shall sustain personal injury or loss of life while lawfully engaged or employed on or about the roads, works, depots and premises of a railroad company, or in or about any train or car therein or thereon, of which company such person is not an employee, the right of action or recovery in all such cases against the company shall be such only as would exist if such person were an employee. *Provided*, that the section shall not apply to passengers. The plaintiff in error sued the defendant in error for the loss of her husband by a death which the jury, by the following special verdict found to be caused by the negligence of the company's servant or servants:

"We find for the plaintiff in the sum of ($5,000) five thousand dollars, subject to the opinion of the court on the question of law reserved, to wit: We find that A. J. Price, at the time of his death, was route agent of the United States Post Office Department, duly appointed and commissioned, his route being on the Western Pennsylvania railroad from Alleghany City to Blairsville, in the State of Pennsylvania; that his duties as such agent required him to be on the mail car on the mail train of said road to receive and deliver mail matter; that for the purpose of his business, and that of the Postal Department, and in accordance with the laws of the United States and the regulation of the Post Office Department, and acceptance thereof by the Railroad company, one end of the baggage car on the mail train was divided off and fitted up for the use of the Department in

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carrying the mails, and that the duties of said route agent required him to be in said room in the car during the running of the train; that said Price was daily on said train making a round trip from Allegheny City to Blairsville and return; that on the 23d of July, 1872, while at his post in his room on said car, Mr. Price was killed in a collision of the mail train coming west with another train of the company going east. That said collision was caused by the negligence or misconduct of the conductor and engineer in charge of the train going east, in neglecting or disobeying orders and in failing to take necessary precaution to avoid a collision.

"We find that the Pennsylvania Railroad Company, by resolution dated April 16, 1868, accepted the provision of the act of the assembly approved 4th April, 1868 (P. L., P. 59); and that [at the] time of the collision the Pennsylvania R. R. Co. was operating the Western Pennsylvania Railroad under lease.

"If under this finding of facts, and under the acts of Congress and acts of assembly offered in evidence, and the postal regulations in evidence, the court should be of the opinion that the plaintiffs, as widow and children of deceased, are entitled to recover, then judgment to be entered on the verdict in favor of plaintiff.

"If the court should be of the opinion that the law is with the defendant, the judgment to be entered in favor of the defendant, *non obstante veredicto*."

Upon this verdict the judge of the trial court held that the deceased was a person engaged in and about the train, within the meaning of the act of 1868, but that he was also within the proviso as a passenger, and gave judgment for plaintiff on the verdict. The judgment was reversed by the supreme court, on the ground that the deceased was not a passenger within the meaning of the proviso, and a judgment was rendered for defendant, to which this writ of error is prosecuted.

The plaintiff argues here and insisted throughout the progress of the case in the State courts, that by reason of certain laws of the United States as applied to the facts found in the verdict of the jury, the deceased was a passenger, and the supreme court erred in holding otherwise. These laws are thus cited in the brief of plaintiff's counsel:

Sec. 8, Act March 3, 1865, 13 Statutes at Large, United States, page 506, provides that "For the purpose of assorting and distributing letters and other matter, on railway post office, the Postmaster-General may, from time to time, appoint clerks who shall be paid out of the appropriation for mail transportation. Sec. 4000 Revised Statutes, United States, requires that "Every railway company carrying the mail, shall carry on any train which may run over its road, and without extra charge therefor, all mailable matter directed to be carried thereon with the person in charge of the same."

We do not think these provisions either aid or govern the construction of the proviso of the Pennsylvania statute.

The person thus to be carried with the mail matter without extra charge is no more a passenger, because he is in charge of the mail, nor because no other compensation is made for his transportation than if he had no such charge, nor does the fact that he is in the employment of the United States, and that the defendant is bound by contract with the Government to carry him, affect the question. It would be just the same if the company had contracted with any other person who had charge of freight on the train to carry him without additional compensation. The statutes of the United States which authorize the employment and direct the service do not, therefore, make the person so engaged a passenger or deprive him of that character, in construing the Pennsylvania statute; nor does it give to persons so employed any right as against the railroad company, which would not belong to any other person in a similar employment by others than the United States. We are, therefore, of opinion that no question of Federal authority was involved in the judgment of the Supreme Court of Pennsylvania, and the writ of error is accordingly dismissed.

Construction of a Lease—Meaning of the Term "Re-Let" as Used Therein.

Supreme Judicial Court for the Commonwealth of Massachusetts.

WILLIE F. MOSELEY *vs.* A. WHITMAN ALLEN.

This was an action of contract on an agreement in a lease. Trial before the court without a jury. The facts in the case are fully set forth in the opinion.

MORTON, C. J.—The defendant executed a written lease to Smith Holt of a tract of land to be used as a coal yard for the term of ten years, from July 1, 1871. The lease contained the following clause: "And the said Allen and his legal representatives agree to pay to said Smith and Holt, and their legal representatives, the value of all buildings and scales which the said lessees or their legal representatives shall place and leave on said premises at the end of said term, provided the said premises shall not be re-let to the lessees or their representatives. The

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value aforesaid shall be determined by appraisers, to be chosen by the parties."

After the execution of the lease, the lessees placed upon the land expensive buildings and scales, which still remain there. It was admitted at the trial that before the lease expired the plaintiff acquired all the interest and rights of the lessees.

After the expiration of the lease the plaintiff continued to occupy the premises until January, 1884, paying monthly the same amount as the rent fixed in the lease.

The defendant asked the court to rule that upon all the evidence "there was such a re-letting of the premises to the plaintiff at the expiration of the lease as would excuse the defendant from any of the terms of the lease calling on him to pay for the property sued for; and that the plaintiff could not recover."

The court rightly refused this ruling, answering that, after the lease expired, the plaintiff occupied under an agreement, which created a tenancy at will. We do not think this was a re-letting within the fair meaning of the clause in the lease which we are considering. When the lease was made, it was contemplated by the grantees that the lessees should put buildings upon the land in order to fit it for the purpose intended, which at the expiration of the term were to be part of the realty and the property of the lessors. The lease therefore provided that the lessors should pay the value of these buildings and scales at the end of the term, unless a new lease should then be given to the lessees or their representatives, in which case the matter of the cost of such buildings and scales could, and naturally would, be provided for by such stipulations of the new lease as the parties might agree upon. If, at the expiration of the lease, the defendant had agreed that the plaintiff might occupy the premises for a month, this would be a re-letting, using that word in its broadest sense; but it would hardly be contended that it was such a re-letting as was in the minds of the parties to the lease, and which they intended should have the effect of releasing the lessor from his obligation to pay for the buildings and scales. Contributing the terms of the lease in the light or the situation and purposes of the parties, we are of opinion that, by the term "re-let," the parties meant a new letting for a fixed and definite term such as was the term created by the lease. Regarding the evidence at the trial in the light most favorable to the defendant, it shows an agreement at the expiration of the lease, which created a tenancy at will, which could have been terminated at any time by the lessor by a month's notice; and we are of opinion that it cannot be regarded as such a re-letting as was intended by the parties to the lease in the provisions we are considering. No question is made as to the right of the plaintiff to maintain this action in his own name, and therefore we do not consider it.—*Chicago Legal News, Jan. 17, 1885.*

Liability of Married Women.

Superior Court N. Y.—Special Term.

ERASTUS BRAINARD *vs.* MARTHA WHITE.

In a suit against a married woman upon her promissory note, in which she charged her separate estate with the payment thereof, the plaintiff is entitled to a simple money judgment only.

Trial by the court without a jury.

HENRY ARDEN for plaintiff.

CEPHAS BRAINARD for defendant.

INGRAHAM, J.—The complaint in this action alleges that the defendant White, a married woman, made her certain promissory note in writing, whereby she promised to pay to defendant Manifold $315, and charged her separate estate with the payment thereof, and delivered same to said payee in payment of an indebtedness for material furnished for work performed on defendant White's separate estate. That the defendant, White, was the owner of certain real estate in the City of New York, particularly described in said complaint, and demands judgment against defendants for the amount of the note; that said real estate be charged with the payment thereof, and that the same is a lien thereon.

Plaintiff, at the time of the filing of the complaint in this action, viz., 28th of July, 1881, filed with the clerk of the city and county of New York a notice of the pendency of this action, describing the property mentioned in the complaint.

That the plaintiff is entitled to a judgment against the defendant White for the amount of the note is not disputed, but plaintiff also asks for a judgment that the real estate described in the complaint and notice of pendency of action be charged with the payment of the note, and that the same is a lien thereon, and to this judgment defendant objects.

Chapter 90 of the laws of 1860 as amended by chapter 172 of the laws of 1862 was repealed by section 36 of chapter 245 of the laws of 1880, p. 371, and the regulation of actions by and against married women are regulated by the Code of Civil Procedure.

Section 450 of the code provides, "In an action or special proceeding a married woman appears, prosecutes or defends alone or joined

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with other parties as if she was single," and section 1206 provides "that a judgment for or against a married woman may be rendered and enforced in a court of record or not of record if she was single."

Taking these two sections together, I am of the opinion that it was the intention of the legislature that proceedings to enforce a liability of a married woman shall be the same as if she was unmarried, and that all distinctions between a *femme sole* and a *femme covert* as to the form of the action and the judgment to be entered is abolished.

In Gerald v. Quam, 10 Abbott, New Cases, 31, in construing sec. 450, it was held that the effect of the action was to eliminate the element of coverture for all actions, and to put the wife on the footing of a single woman; and this case was followed by the city court of Brooklyn in Trebing v. Vetter (12 Abbott N. C., page 302, note); and, although this court has refused to follow these cases in Muser v. Lewis (50 Superior Court, 431), so far as to hold that the code does relieve the husband from liability for the torts of the wife, it was on the ground that by the common law the husband was liable for the torts of his wife, and as the Court of Appeals held in Bertles v. Nenau (92 New York, 152, and cases there cited), that the rules of the common law remain in full force except to the extent that they are clearly annulled by statute, and that, as no statute has in express terms annulled the husband's liability, the liability still continues.

The judgment in an action against a married woman, by section 1206 of the code, is to be rendered and enforced as if she was single, If the defendant White was a single woman, it could not be claimed that plaintiff would be entitled to the judgment asked in the complaint. He would be entitled to a simple money judgment against the defendant, and that is the judgment he is entitled to in this action.

The decision of the General Term in this action on the motion to cancel the *lis pendens* was not on the ground that the plaintiff could maintain the action, but that the court would not try the issue on such a motion. (See opinion General Term, reported in 48 Superior Court Reports).

Whether or not plaintiff would have been entitled to the judgment asked for before the passage of the Code of Civil Procedure, I am of the opinion that under the code the only judgment that can be given against a married woman is the judgment that would be given against her if single, and that plaintiff is therefore entitled to a judgment against defendant for the amount of the note and interest with costs, but is not entitled to the remainder of the relief.—*New York Daily Register.*

Allison v. Montgomery.

Before an action can be brought for damages for breach of a parol contract to convey land there must be an actual recission.

A parol contract for the sale of land is neither illegal nor *per se* void, but voidable only, hence, if the vendor does nothing by way of repudiation he cannot be visited with damages.

Supreme Court of Pennsylvania.

Error to the Court of Common Pleas No. 2, of Allegheny County.

Opinion by Gordon, J. Filed November 10, 1884.

This was an action of assumpsit brought by the plaintiff, James G. Allison, against Thomas Montgomery, for the recovery of the price of a mowing machine, some fifteen bushels of wheat, and also for damages alleged to have resulted to the plaintiff, from the breach, by the defendant, of a parol gift of a lot of land. On the trial of the case, after hearing the evidence produced on part of the plaintiff, the court below held that it was not sufficient to sustain the action, and directed a verdict for the defendant. In this, notwithstanding the able argument of the counsel for the plaintiff in error, we have not been convinced that a mistake was made by the learned judge who presided at the trial in the Common Pleas.

It seems from the testimony that the plaintiff, a son-in-law of the defendant, went upon the farm, and into the house of his father-in-law, as a croper. After he had been there for a month or two, the fact appears to have been mutually recognized that the farm house was not large enough for the two families.

To meet this difficulty, Montgomery proposed to erect a small house for the use of Allison; he, however, not being satisfied with the size or character of the building which his father-in-law proposed to erect, it was orally agreed between them that the plaintiff should himself put up such a house and outbuildings as might accord with his own views, on a twelve acre lot which Montgomery had recently bought and attached to his farm.

The proposed erections were accordingly made by Allison at a cost of some seven or eight hundred dollars.

It also appears, on part of the plaintiff, that as an inducement to make the improvements, as above stated, the defendant had previously promised to execute a deed for

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this twelve acre lot to the plaintiff and his wife, though at what particular time this was to be done does not very definitely appear.

As soon as the house was finished the plaintiff moved into it, and continued its occupancy uninterruptedly until he concluded to change his residence to the city of Allegheny. He then left the premises in charge of the defendant with authority to rent them, which, he himself says, was done under his direction. Taking Allison's testimony for verity, and his possession of the property was never interfered with or disputed by the defendant, whilst, so far as the deed for it was concerned, it seems never to have entered into the plaintiff's head to make a demand for it. The only thing that even looks like a denial of his right of possession is found in his own evidence, where he says that in a talk which he had with his father-in-law in the city of Allegheny, he refused to allow him to go to the lot at all, but in this he immediately contradicts himself by saying: "He would not allow me to go at all near his premises. We had no talk concerning just the twelve acres, or my going on it at all. I gave him authority to rent the house; he asked me what the house would rent for, and he rented it under my instructions." Now, we agree that, notwithstanding the statute of frauds and perjuries, an action will lie in favor of a grantee for a breach of a parol contract for the sale of land, though since the overruling of the case of Jack v. McKee, 9 Barr, 235, and its consequents, by Dumars v. Miller, 10 Casey, 319, the damages which may be recovered in such action are to be confined to the purchase money that may have been paid, or the expenses actually incurred in consequence of the contract. The vendor must restore the vendee to the condition in which he found him, but he is not bound to compensate him for the loss of a bargain. But in order to recover all it must be shown affirmatively that the defendant has refused to comply with his part of the agreement. It is not enough that the contract is within the statute, and that by reason thereof either party may rescind at pleasure; there must be an actual recission; an actual breach, or no action will lie. A parol contract for the sale of land is neither illegal nor *per se* void, but voidable only, hence, if the vendor does nothing by way of repudiation he cannot be visited with damages. But in the case in hand, we have as yet not discovered that Montgomery has been convicted of a violation of his agreement with his son-in-law.

He has neither evicted him from the premises on which the house was built, nor refused to execute a deed; in other words, there is no evidence of the recission of the contract on part of the defendant. It is true, if we take the evidence of Montgomery, who was put on the stand by the plaintiff for the purpose of cross-examination, though he never actually refused to execute a deed, yet neither did he intend so to do even if it were demanded, but for this intention he gives as a reason that he never entered into the alleged contract. If, therefore, we are to give force to his testimony, there is not now, and never was, any foundation for the plaintiff's claim. Under the circumstances as above detailed, we cannot but approve the action of the court in taking this part of the case from the jury.

The balance of the case has less, if possible, to support it than that founded upon the alleged parol gift. When the plaintiff abandoned the defendant's premises, the mowing machine was left in charge of the latter, and under this arrangement it still remains in his possession. He never professed to have any claim to it except as Allison's bailee, neither has Allison ever made a demand for it. The same can be said of the wheat; it remains just where he left it; the defendant so far from denying his right to, or property in it, not only filled his orders when he chose to send them, but took the paine to have the wheat ground for his use, and if he did not get every grain of it, it was simply because he did not see proper to ask for it.

The judgment is affirmed.

Court of Common Pleas, Pennsylvania.

BIRCHALL and WALSH
vs.
THE THIRD NATIONAL BANK.

A banker who dishonors the check of a depositor when he has enough funds in his hands to meet it is liable therefor; and if the depositor is a person engaged in business, so that the preservation of his credit is important to him, he may recover substantial damages without proving that he suffered any special injury from the banker's negligence.

Rule for a new trial.

Birchall and Walsh, dealers in country produce, having an account in the Third National Bank of Philadelphia, drew upon it one check for $68 in favor of E. J. Blair, and one for $250 in favor of themselves. These were both deposited in country banks, by which they were forwarded to Philadelphia for collection. Upon presentation at the banking house of the defendant payment was refused upon the ground that the plaintiffs had not sufficient funds to meet them. The first check was protested, and the second held to await a possible deposit, notice to that effect being

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given to the bank from which it had been received. Upon an explanation being demanded by the plaintiffs, the defendant discovered that by reason of a clerical error their account showed $1,000 less to their credit than they really had, so there was an actual balance in their favor of three times as much as the checks called for. The bank officers admitted the mistake and gave the plaintiffs a written explanation, to which they added that the account had never been overdrawn.

At the trial these facts were given in evidence, but no considerable special damage was proved. The verdict was for $1,000, and the defendant obtained a rule for a new trial, on the ground that the damages were excessive.

Counsel for the plaintiff argued that the finding of the jury ought not to be disturbed, because the amount of damages was for them to determine, and there is nothing to show that they were in any way misled or mistaken: 1 Sutherland on Damages, 80; Waters v. Bristol, 26 Conn., 398; Worster v. Bridge Co., 16 Pick., 547; Wilson v. Fitch, 41 Cal., 385; Sommer v. Wilt, 4 Serg. & R., 19; Hilliard on New Trials, 367. A banker who refuses payment of a depositor's check when there are enough funds on deposit to meet it is liable in substantial damages; Morse on Banks, 520; Sedgwick's Leading Cases on Damages, 453; Boyd v. Fitt, 14 In. Common Law, 43; Prehn v. Bank, L. R. 5 Exch., 92; Bank v. Peck, 127 Mass., 298; Saylor v. Bushong, 4 Out., 27; Fogarties v. Bank, 8 Am. Law Reg. O. S., 393. And the injury is greater to a depositor who is engaged in business, because his general credit and reputation suffer: Rollin v. Steward, 14 C. B., 595; Marzetti v. Williams, 1 B. & A., 541.

Counsel for the defendant contended that inasmuch as no special damage had been proved, and that the bank had hastened to correct its mistake, only nominal damages ought to be awarded.

The court, however, was of opinion that the injury which the plaintiff's credit must be presumed to have sustained ought to be vindicated, and discharged the rule upon condition that the plaintiff would file a remittitur of all damages over $600.—*Chicago Legal News.*

AN attorney in Cincinnati recently got $100 damages in a suit against a street railway company for the failure of the conductor to stop his car when hailed, by reason of which plaintiff got left on a cold day.

Manslaughter through Ignorance or Negligence.

Whether one can be guilty of manslaughter unless the death of the party who lost his life was the consequence of some unlawful act, has been a mooted question, but has been answered in the affirmative by the Supreme Judicial Court of Massachusetts in Commonwealth v. Pierce. The defendant had caused a woman's death by neglect in furnishing a prescription, *i. e.*, covering her with kerosene. The court below ruled that:

"It is not necessary to show an evil intent; if, by gross and reckless negligence the defendant caused the death, he is guilty of culpable homicide. The question is, whether the kerosene, if it was the cause of the death, either in its original application, renewal or continuance, was applied as the result of foolhardy presumption or gross negligence by the defendant. A man is not to be convicted of manslaughter merely because of his ignorance. His ignorance is only important as bearing upon the question whether his conduct in the care and treatment of the patient was marked by foolhardy presumption or gross and reckless carelessness. The defendant in this case is to be tried by no other standard of skill or learning than that which he necessarily assumed in treating the deceased; that is, that he was able to do so without gross recklessness or foolhardy presumption in undertaking it. The government must show not merely the absence of ordinary care, but gross carelessness amounting to recklessness."

HOLMES, J., speaking for the court, in affirming the action of the Superior Court, says:

"The defendant's duty was not enhanced by any expressed or implied contract; but he was bound at his peril to do no grossly reckless act when he intermeddled with the person of another in the absence of any emergency or other exceptional circumstances. The defendant relies on the case of the Commonwealth v. Thompson, 6 Mass., 134, and that to constitute manslaughter the killing must have been a consequence of some unlawful act. If this means that the killing must be the consequence of an act which is unlawful for independent reasons apart from its likelihood to kill, it is wrong.

Such may once have been the law, but for a long time it has been just as fully, and latterly we may add, much more willingly recognized that a man may commit murder or manslaughter by doing otherwise lawful acts recklessly, as that he may by doing acts unlawful, from which death accidentally ensues. But recklessness in a moral sense means a certain state of consciousness with reference to the consequences of overt acts.

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There is no denying that Commonwealth v. Thompson, although possibly distinguishable from the present case on the evidence, tends very strongly to limit criminal liability for reckless conduct, to cases where the recklessness is moral, in the sense above explained. But it is to be observed that the court did not intend to lay down any new law. They cited and meant to follow the statement of Lord Hale, 1 P. C., 4–29, and we think that they fall into the mistake of taking him too literally. Lord Hale admitted that other persons might make themselves liable by reckless conduct. We doubt if he meant to deny if a physician may do so as well as any one else. He has not been so understood in later times.

In dealing with a man who has no special training, the question whether his act would be reckless in a man of ordinary prudence is equivalent with an inquiry into the degree of danger attaching to the act of common experience, under the circumstances known to his action. It is here implied, and is undoubtedly true as a general proposition, that a man's liability for his acts is determined by their tendency under the circumstances known to him, and not by their tendency under all the circumstances actually affecting the result, whether known or unknown. Another cannot escape on the ground that he has had less than a common experience. Common experience is necessary to a man of ordinary prudence, and a man, assuming to act as the defendant did, must have it at his peril. Here the defendant knew he was using kerosene. More than that, he saw from day to day how it worked. The jury found that it was applied through foolhardy presumption of gross negligence, and that is enough. When the defendant applied the kerosene to the person of deceased, in a way in which the jury have found to have been reckless, or, in other words, seriously and unreasonably endangering life according to common experience, he did an act which his patient could not justify, by her consent, and which, therefore, was an assault notwithstanding that consent.

The allegation that the kerosene was of a dangerous tendency, although often inserted in the indictment, is superfluous, it being enough to allege that death did in fact result from the assault; it would be superfluous in the case of an assault with a stick, or when the death resulted from assault combined with exposure.

THE Supreme Court of New York has declared unconstitutional the law forbidding the manufacture of cigars in the tenement-houses of the larger cities.

NOTES OF RECENT DECISIONS.

Landlord and Tenant: Covenants in Lease: Erasure.—Parties prepared a lease upon a printed form. In the form was a covenant not to sub-let without the lessor's written consent. Following the covenants were conditions, one reserving the right to re-enter in case of sub-letting without the lessor's consent. Before executing they erased the clause containing the covenants, but left that containing the condition unchanged. *Held*, That the erasure of the covenant did not raise an inference that they intended the condition to be of no effect. [Pond v. Holbrook et al. Supreme Court of Minn., July, 1884.]

Evidence: Expert Testimony; Colculation to Frighten Horses.—In an action against a person leaving an object on the roadside, at which it is alleged that a certain horse taking fright, reared, fell, and died, causing in his fall personal injuries to the plaintiff, witnesses familiar with horses may be called upon to give their opinion, based upon facts observed by themselves, as to whether the object in question was calculated to frighten horses; whether the mere fall of the horse could have killed him; and whether a horse could have been frightened to death by the object in question. [Piollet v. Suniners. S. C. Pa. Oct. 6, 1884. 15 W. N. C., 241.]

Promissory Note: Owner of Land Paying to Save his Land from Incumbrance.—The purchaser of land subject to a prior incumbrance has the right to pay off the debt and thus relieve his land, and to receive the note evidencing the debt for his own protection; and if such payment is not made under a previous contract with the party owing the same, the party so paying is entitled to be subrogated to all the rights of the holder of the indebtedness.

Evidence: Insanity; Non-Professional Witnesses.—Non-professional witnesses, having sufficient opportunities of observing a person alleged to be insane or *non compos mentis*, may give their opinions as to his sanity or mental condition, as the result of their personal observation, after first stating the facts which they observed. [Baughman v. Baughman. S. C. Kan. Nov. 7, 1884. 4 Pac. Rep., 1003.]

Evidence: Expert Testimony.—Whether goods were handled by a sheriff as well "as goods usually are when attached," is not a matter for expert testimony, and a question put to an expert witness to elicit his opinion upon that question, is improper. [Dow v. Julien. S. C. Kan. Nov. 7, 1884. 4 Pac. Rep., 1000.]

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The Courts.

JAN. 26, 1885.

Byron M. Cutcheon, of Manistee, Mich.; W. S. Wood, of San Francisco, Cal.; Wm. Craig, of San Francisco, Cal.; Charles F. Libbey, of Portland, Me., and Edward Stephens, of New York city, were admitted to practice.

No. 851. The Board of County Commissiners of the county of Anderson v. Thomas P. Beal. Judgment affirmed with costs and interest. Opinion by Mr. Justice Blatchford.

No. 160. John H. Coon et al. v. Washington Wilson; decree reversed with costs and cause remanded with directions to dismiss the bill with costs. Opinion by Mr. Justice Blatchford.

No 860. The Nashville, Chattanooga and St. Louis Railway Company v. The United States; appeal from the Court of Claims; judgment affirmed. Opinion by Mr. Justice Gray.

No. 1011. Dennis Looney v. The District of Columbia; appeal from the Court of Claims; judgment affirmed. Opinion by Mr. Justice Gray.

No. 161. Willibald Voss v. Charles J. Fisher; decree reversed with costs, and cause remanded with directions to dismiss the bill. Opinion by Mr. Justice Woods.

No. 946. Mrs. Widow Bernard Avegno, testatrix, etc., et al., v. Wm. B. Schmidt et al.; judgment affirmed with costs. Opinion by Mr. Justice Woods.

No. 1166. The Town of Santa Anna v. Augustus Frank; judgment affirmed with costs and interest. Opinion by Mr. Justice Harlan.

No. 24. L. R. Tucker et al. v. Clara Masser, widow, et al.; judgment reversed with costs and cause remanded with directions to award a new trial. Opinion by Mr. Justice Field.

No. 921. The County of Dakota v. Henry H. Glidden; dismissed with costs. Opinion by Mr. Justice Miller.

No. 166. Anna M. Price, widow, etc., et al., v. The Pennsylvania Railroad Company, etc.; dismissed for the want of jurisdiction. Opinion by Mr. Justice Miller.

No. 1148. Cheong Ah Moy v. The United States; dismissed. Opinion by Mr. Justice Miller.

No. 1231. Claude Cailot, et al., etc., v. Gustavus F. Deetkin; dismissed for the want of jurisdiction. Opinion by Mr. Justice Miller.

No. 146. Joseph H. Chadwick et al. v. The United States; judgment affirmed by a divided court. Announced by Mr. Justice Miller.

No. 87. Henry Peychard, surviving syndic, etc., v. The United States; motion to dismiss denied.

No. 887. George A. Morrison et al. v. John Durr et al.; motion to advance denied.

No. 185. The Gloucester Ferry Company v. The Commonwealth of Pennsylvania; passed.

No. 1251. The First National Bank of Xenia, Ohio, v. Daniel M. Stewart, et al., administrator, etc.; advanced and assigned for March 2 next.

No. 1078. William H. Fowle, jr., administrator, etc., v. Alexander Hay; motion to dismiss submitted.

No. 238. The Memphis and Little Rock Railroad Company (as reorganized) v. The Southern Express Company.

No. 260. The St. Louis, Iron Mountain and Southern Railway Company v. The Southern Express Company; and

No. 321. The Missouri, Kansas and Texas Railway Company v. William B. Dinsmore, president Adams Express Company. Assigned for first Monday in April; to be heard as one case.

Nos. 189 and 190. Edw. G. Thompson, trustee, etc., et al., v. Elizabeth E. Boeseller et al.

No. 196. The McNab & Harlan Manufacturing Company et al v. Edw G. Thompson, trustee, etc., et al., and

No 197. John Eaton et al. v. Edw. G. Thompson, trustee, etc., et al; Nos. 196 and 197 advanced to be heard with Nos. 189 and 190.

No. 188. The Farmers' Loan Trust and Company et al. v. Christian Waterman et al; on motion of Mr. J. D. Campbell dismissed with costs.

No. 1100. Cornelius Gamble v. John R G. Pitkin, United States marshal, et al. Motion to dismiss and to affirm submitted.

JAN. 27, 1885.

No. 1261. Benj. J. Frost et al. v. The Board of Supervisors of Wayne County et al. Docketed and dismissed with costs.

No. 202. Joseph Gunther v. The Mayor and City Council of Baltimore. Dismissed with costs.

No. 178. James Sargent v. Hall Safe and Lock Co., et al.; argument concluded.

No. 179. Jasper Asbill et al. v. Edwin P. Whitmore; continued per stipulation.

No. 180. John Chetwood v. Thomas B. C. Berrian. Dismissed with costs.

No. 181. Richard Jennings v. Hascal L. Taylor. Dismissed with costs.

No. 182. Elisha Hyat et al. v. The Vincennes National Bank et al. Submitted.

No. 756. Samuel A. Peugh v. Henry S. Davis. Argued.

No. 183. B. F. Camp v. The United States. Argument commenced.

JAN. 28, 1885.

G. G. Frelinghuysen, of New York City, was admitted to practice

No. 183. B. F Camp v. The United States. Argument concluded.

No. 1144. John E. Parsons et al. executors, etc., v. Brewster Wilkinson et al. Submitted under twentieth rule by leave of court.

No. 525. The United States (intervenor), v. The Indianapolis and St. Louis Railroad Company. Advanced and Submitted.

No. 1186. The Chicago and Northwestern Railway Company v. Emanuel H. Crane. Submitted under thirty-second rule.

No 1141. Frederick Hopt v. The People of the Territory of Utah. Submitted.

JAN. 29, 1885.

Oliver J. Wells, esq., of Brooklyn, N. Y., was admitted to practice.

Mr. Justice Miller, acting Chief Justice, announced that on Monday next the court would adjourn until Monday, March 2, next.

No. 6. Original. The State of Alabama v. Isaac T. Burr et al. Time to plead or demur extended to April 1, next.

No. 1240. Andrew Stewart et al., etc., v. James H. Dunham et al. Motion to rescind order docketing and dismissing appeal, and for leave to docket cause. Argued.

No. 1027. Jesse J. Murphy v. Alexander Ramsey et al.

No. 1028. Mary Ann M. Pratt v. Alexander Ramsey et al

No. 1029. Mildred E. Randall et al. v. Alexander Ramsey et al.

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SUPREME COURT OF THE DISTRICT OF COLUMBIA.

GENERAL TERM.

Jan. 26, 1885.

Walter et al. v. Ward. Rule on defendant to show cause issued and returnable February 9.

District of Columbia v. Met. R. R. Co. Ordered on calendar.

Sturtevant v. Carpenter. Submitted.

Jan. 27, 1885.

Hamilton v. Clarke. Argued and submitted.

Jan. 28, 1885.

Kelleher v. Ashford. On hearing.

Jan. 29, and 30, 1885.

Same. On hearing.

IN EQUITY.—New Suits.

Jan. 26, 1885.

9307. Frederick H. Paine v. Elizabeth M. Burnett et al., Conveyance. Com. sol., W. Blair.

Jan. 27, 1885.

9308. Outerbridge Horsey v. Benjamin F. Beveridge et al Vacation. Com sols., Crittenden & Mackey.

9309 Timothy Brosnan v. Penelope Brosnan. For divorce. Com. sol., J. A. Clarke.

Jan. 28, 1885.

9310. Adam A Kramer et al. v. John M. Mueller et al. For receiver. Com. sol, W. B Webb.

9311. James L. R. Campbell et al. v. same. Injunction. Com. sol, J. I. Joyce.

Jan. 29, 1885.

9312. Elson T. Wright v. George H. Levis et al. Injunction, &c. Com. sol, W. K Duhamel

Jan. 30, 1885.

9313. In re Walter F Halleck, alleged lunatic. Appt. of committee. Com. sol., W. K. Duhamel.

9314. Harriet A Paxton v. John Paxton. For divorce. Com. sol., W. T. Bailey.

Jan. 31, 1885.

9315. John Brennan v. Patrick J. Torney. Injun. Com. sol., P. B. Stiltson. Defts. sol., J. E. McNally.

CIRCUIT COURT.—New Suits at Law.

Jan. 24, 1885.

25929. Barbara T Jueneman, adm'x v. George O. Miller. Judg't of Justice Walter, $52 60 Piffs. atty, J A. Clarke.

25930. Same v same. Judgment of Justice Walter, $51.15. Piffs. atty., same

Jan. 26, 1885.

25931. Brooks & Moore v. Ephraim Nash. Appeal. Piffs atty., E. A. Newman. Defts. atty., F. W. Jones.

25932. Patrick H Sugru v. Samuel H. Walker, adm'r. Appeal. Deft. atty., A. B. Duvall.

25933. Jonathan L. Rivers v. Francis Carter. Appeal.

25934. Josephine Fant v Walter F. Noland. Appeal. Piffs. attys, Crittenden & Mackey.

25935. Robert D Ruffin, atty., v. Philip Stewart. Appeal. Defts. atty., D. O'C. Callaghan.

Jan. 27, 1885.

25936. Adam A. Kramer v. John M. Mueller. Note, $8, 552 45 Piffs. atty., W B. Webb.

25937. Anna M. King v. same. Notes, $9,112.57. Piffs. atty., same.

Jan. 28, 1885.

25938. Elmer E. Barton v. Wm. T. Keenan. Appeal. Piffs. atty., E. H. Thomas.

25939. Cock & Bernheimer v. Fall & Love. Bills of ex. $195.47. Piffs. atty., same.

25940 The Scheutzen Park Co, of the Dist. of Col., v. August Schmidt. Appeal. Defts. atty, E. C. Blunt.

25941. Howard & Wrenn v A. Devote and Son. Acct., $376 43. Piffs. atty., D. E. Cahill.

Jan. 29, 1885.

25942. Aaron Bradshaw v. James W. Pumphrey. Replevin. Piffs. atty., J. G. Bigelow,

PROBATE COURT.—Justice Hagner.

Jan. 30, 1885.

Estate of Hamilton Hughes. Order of publication.

Estate of Mary Shannon Order of publication issued.

Estate of Charles M. Murdock Order of publication.

Estate Manuel C. Causten. Letters revoked and issued to James H Taylor on bond of $5,000.

Estate of E. M. Wight Order directing payment of rent.

Estate of Thomas Beck. Letters granted to Wm. Beck, and bnod fixed at $800.

Estate of Wm. Martin. Order appointing Charlotte Martin administratrix.

Mrs. Catharine J. Curry was appointed guardian to her children, and bond fixed at $250.

Estate of John Casey. Letters issued to S. Bieber, and bond fixed at $400.

Estate of Francis A. Lockwood. Order of publication.

Estate of Mary S. Lay. Letters testamentary directed to issue to R. G and M. W. Lay, and bond fixed at $5,000.

Estate of Luther Martin. Order of sale of personalty.

Estate of A. B Norton. Order to invest funds.

Estate of George W. Rice. Will admitted to probate and letters granted to M. P. Rice and D. L. Brainard, and bond fixed at $5,000.

Estate of Caroline E. Newkirk. Revocation filed and letters granted to B. F. Evans, and bond fixed at $200

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 27th day of January, 1885.

WILLIAM SRARON vs. JOHN R TUCKER ET AL., Heirs of Thomas Tudor Tucker. } Equity. No. 9305.

On motion of the plaintiff, by Hillyer & Ralston, his solicitors, it is ordered that the defendants, H Tudor Tucker Fanny Bland Graham, J. R. Graham, Mary T. Magill, Evelina Powell, W. L Powell, Virginia Edwards, John E. Edwards, Elizabeth Dallas Tucker, Virginia B Tucker, Dallas Tucker, Hattie A Tucker, Cassie D Brown, John Thompson Brown, John R. Tucker, Emma B. Tucker, Evelina T. Lucas, D. B. Lucas, Nannie S McLaughlin, I. Fairfax McLaughlin, St. George Tucker Brooke, Mary B. Brooke, Frank J. Brooke, Gay Bentley Brooke, D. Tucker Brooke, Lucy Higgins Brooke, Henry L. Brooke, Elizabeth D. Brooke, Laura Beverly Bedinger, Everett W Bedinger, Elizabeth Gilmer Tucker, Walker Gilmer Tucker, Lizzie Edwards Tucker, Evelina Tucker, Luey Richardson, Robert B. Richardson, Annie Tyler, Lyon G. Tyler, Eliza Taylor Tucker, Alfred B Tucker, Cynthia B T. Coleman, Charles W. Coleman, B. St George Tucker, Eliza C. Tucker, Fannie B. B T. Taliaferro, Julia Clark Tucker, Nathaniel Beverly Tucker, Wm. Francis Peyton Tucker, John R. Bryan Delia Page, John R. Page, Fannie Carmichael, S. W. Carmichael, Georgia B. Grinnan, A. G. Grinnan, John R. Bryan, Jr., Margaret R. Bryan, St. George Tucker C Bryan, Joseph Bryan, Isabel S. Bryan, C. B. Bryan, Mary S. C Bryan, Fannie Bland Brown, H. Peronneau Brown, Virginia C. Braxton, St George Tucker Coalter, Ada B Lewis Tucker, Virginia Tucker, Virginia Lewis Tucker, Francis M Tucker, Mary Thornton Tucker, and Nathaniel Beverly Tucker, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day, otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Asso. Justice.

A true copy. Test: 5 R J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Holding an Orphans' Court Jan. 30, 1885.

In the matter of the Estate of Hamilton Hughes, late of the District of Columbia, deceased

Application for Letters of Administration on the estate of the said deceased, has this day been made by William H. Hoover, with the consent of the alleged next of kin.

All persons interested are hereby notified to appear in this Court on Friday, the 27th day of February next at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B HAGNER. Justice.

Test: H J. RAMDELL, Register of Wills.

BIRNEY & BIRNEY, Solicitors. 5-3

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business January 30, 1885.

In the matter of the Estate of Caroline Elizabeth Van Newkirk, late of the City of Washington, District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased, has this day been made by Benjamin F. Evans, of the City of Washington

All persons interested are hereby notified to appear in this Court on Monday the 2nd day of March next at 12 o'clock, m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B HAGNER, Justice.

Test: H. J RAMSDELL, Register of Wills.

E. B. HAY, Solicitor. 5-3

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Legal Notices.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Archibald C. Spalding late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of January next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 26th day of January, 1885.
5-3 LUCY SPALDING, Ex'x.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration d. b n., c. t. a., on the personal estate of Elijah W. Hager, late of Onondaga, N. Y., dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of January next; they may otherwise by law be excluded from all benefit of the said estate
Given under my hand this 28th day of January, 1885
5 3 JOHN TRIMBLE,
HAGNER & MADDOX, Sol'rs. Administrator d.b.n.,c.t.a.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Joseph D. Harris, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of January next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 20th day of January, 1885.
ELIZABETH W. HARRIS, Executrix.
R. F. LEIGHTON, Solicitor. 5-3

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Catharine Robinson, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of January next; they may otherwise by law be excluded from all benefit of the said estate
Given under my hand this 27th day of January, 1885.
MICHAEL BOYLAND, Administrator.
H. B. MOULTON, Solicitor. 5-3

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 30, 1885
In the matter of the Will of Francis A. Lockwood, late of the District of Columbia, deceased.
Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Margaret M Lockwood.
All persons interested are hereby notified to appear in this court on Friday, the 27th day of February next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to probate and Letters Testamentary on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. A. B HAGNER, Justice.
Test: 5 3 H. J. RAMSDELL, Register of Wills.
HENRY M. BAKER, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 27th day of January, 1885.
FREDERICK H. PAINE
v.
ELIZABETH M BURNELT,
GEORGE H BURNETT ET AL. } No. 9307.
On motion of the plaintiff, by Mr. Woodbury Blair, his solicitor, it is ordered that the defendants, Elizabeth M Burnett, George H. Burnett, Alexander M. Burch and wife, Ellen Burch Brodnax and John Brodnax, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.
By the Court. A. B. HAGNER Justice.
A true copy. Test: 5-3 R. J. MEIGS, Clerk

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding an Orphans' Court. Jan 30, 1885.
In the matter of the Estate of Charles M Murdock late of Arequipa, Peru, formerly of Province of Ontario, Canada, deceased.
Application for Letters of Administration on the estate of the said deceased has this day been made by Frederick W Jones, at the request of decedent's next of kin.
All persons interested are hereby notified to appear in this court on Friday, the 27th day of February, next, at 11 o'clock m., to show cause, if any they have, why Letters of Administration on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. A B. HAGNER, Justice.
Test: 5-3 H. J. RAMSDELL, Register of Wills

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business January 30, 1885.
In the matter of the Estate of Mary Shannon, late of the District of Columbia, deceased
Application for Letters of Administration on the estate of the said deceased has this day been made by James Fullerton
All persons interested are hereby notified to appear in this court on Friday, the 27th day of February next, at 11 o'clock a. m., to show show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. A B HAGNER Justice.
Test: 5-3 H. J. RAMSDELL, Register of Wills.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John Casey, late of the District of Columbia, deceased
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 30th day of January next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 30th day of January, 1885.
5-3 SAMUEL BIEBER,
LEON TOBRINER Solicitor. Administrator

THIS IS TO GIVE NOTICE
That the subscriber of Washington City, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration d. b. n., on the personal estate of William Martin, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of January next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 30th day of January, 1885.
5 CHARLOTTE A. MARTIN.
EDWARDS & BARNARD, Sol'rs Adm'x de bonis non.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia
WILLIAM BURGESS ET AL.
v.
HERMAN HOLLANDER ET AL. } No. 9,295, Eq. Doc. 24.
This cause being referred to me to state the debts of the defendant, Herman Hollander, and assets, notice is hereby given that I shall proceed under the said order of reference on Thursday, February fifth, 1885, at one o'clock p m., at my office, in the United States Court house, at which time and place all creditors of the said Herman Hollander, and persons interested in the said matter, may appear and present their claims.
5-1 JAS G. PAYNE, Auditor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 28th day of January, 1885
JULIA A SMITH
v.
MARIA JEFFRIES ET AL. } No. 9303, Equity.
On motion of the plaintiff, by Mr Woodward, her solicitor, it is ordered that the defendants, the unknown heirs of Clarissa Bruce, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.
By the Court. A. B. HAGNER, Justice.
True copy. Test: 5 R. J. MEIGS, Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 27th day of January, 1885.

THOMAS J FISHER vs. JOHN R TUCKER ET AL, Heirs of Thomas Tudor Tucker. } Equity. No. 9306.

On motion of the plaintiff, by Hillyer & Ralston, his solicitors, it is ordered that the defendants, H. Tudor Tucker Fanny Bland Graham, J. R. Graham, Mary T. Magill, Evelina Powell, W. L Powell, Virginia Edwards, John E. Edwards, Elizabeth Dallas Tucker, Virginia B Tucker, Dallas Tucker, Hattie A. Tucker, Cassie D Brown, John Thompson Brown, John R. Tucker, Emma B. Tucker, Evelina T. Lucas, D. B. Lucas, Nannie S McLaughlin, I. Fairfax McLaughlin, St. George Tucker Brooke, Mary B. Brooke, Frank J. Brooke, Gay Bentley Brooke, D. Tucker Brooke, Lucy Higgins Brooke, Henry L Brooke, Elizabeth D. Brooke, Laura Beverly Bedinger, Everett W Bedinger, Elizabeth Gilmer Tucker, Walker Gilmer Tucker, Lizzie Edwards Tucker, Evelina Tucker, Lucy Richardson, Robert B. Richardson, Annie Tyler, Lyon G. Tyler, Eliza Taylor Tucker, Alfred B. Tucker, Cynthia B T. Coleman, Charles W. Coleman, B. St George Tucker, Eliza C. Tucker, Fannie B. B T. Taliaferro, Julia Clark Tucker, Nathaniel Beverly Tucker, Wm. Francis Peyton Tucker, John R. Bryan Delia Page, John R. Page, Fannie Carmichael, S W. Carmichael, Georgia B. Grinnan, A. G. Grinnan, John R. Bryan, Jr., Margaret R. Bryan, St. George Tucker C Bryan, Joseph Bryan, Isabel S. Bryan, C. B. Bryan, Mary S. C Bryan, Fannie Bland Brown, H. Peronneau Brown, Virginia C. Braxton, St George Tucker Coalter, Ada B Lewis Tucker, Virginia Tucker, Virginia Lewis Tucker, Francis M Tucker, Mary Thornton Tucker, and Nathaniel Beverly Tucker, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day, otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Asso. Justice.

A true copy. Test: 5 R J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Holding a Special Term for Orphans Court Business. January 30th, 1885.

In the case of Ira W. Hopkins, administrator of Thomas Riggles, deceased, the Adm'r aforesaid has, with the approval of the court, appointed Friday, the 20th day of February, A. D. 1885, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrater will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 5-3 H. J. RAMSDELL, Register of Wills.
GEO. W. SALTER, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, January 30, 1885

In the case of Frank D Orme and John A. Hamilton, Executors of Jane E. Haswell, dec'd, the Executors aforesaid have, with the approval of the court, appointed Friday, the 27th day of February, A D. 1885, at 11 o'clock a. m, for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

Test: 5 H J RAMSDELL, Register of Wills.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of William Middleton, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of January next: they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 19th day of January, 1885.

CATHERINE MARY MIDDLETON,
RICHARD P. EVANS, Solicitor. 4-3 Executrix.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business, January 24, 1885

In the matter of the Will of Levi S. Thomas, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased, has this day been made by Charlotte R. Thomas

All persons interested are hereby notified to appear in this Court on Friday, the 20th day of February next, at 11 o'clock, a. m., to show cause why said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S COX, Justice.
Test: H. J. RAMSDELL, Register of Wills.
WM H BARTON, Solicitor. 4-3

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Luther Martin late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23d day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23d day of January, 1885.

JAS. S. EDWARDS,
Administrator. c. t. a.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 22d day of January, 1885.

HELLEN J. DURFEE v. GEORGE H. DURFEE. } In Equity, No. 9297.

On motion of the plaintiff, by Messrs Robert R. Shellabarger and Charles S. Wilson her attorneys, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. W. S COX, Justice, &c.
A true copy Test: 4-3 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Sara P. Copeland, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of January next: they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of January, 1885.

EDWIN B. HAY,
4-3 Administrator

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Mattie Lathrop, late of the District of Columbia, dec'd

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of December, 1884.

1 HENRY M. BAKER, Executor.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Davis Richards, late of the United States of America, decd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of December, 1884.

CALDERON CARLISLE,
1 Administrator.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

THEODORE A. MILLS ET AL. v. SUSAN E MILLS ET AL. } 9042. Eq. Doc. 24.

Talmadge A. Lambert, Sidney T. Thomas and Charles C. Cole, heretofore appointed as trustees in this cause, having reported that on the 4th day of December, 1884, they sold, in conformity with the decree heretofore made in this cause directing the same, lot numbered one on the plat of the estate of the Clark Mills, filed in said cause, for the sum of two thousand nine hundred and fifty dollars ($2,950), it is, this 6th day of January, 1885 ordered that said sale stand finally ratified and confirmed unless cause be shown against the same on or before the 6th day of February, 1885 Provided a copy of this order be published for three successive weeks prior to said day in the Washington Law Reporter

By the Court. W. S. COX, Justice.
A true copy. Test: 2 R. J. MEIGS, Clerk,

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 24, 1885.

In the matter of the Estate of John Feldman, late of Washington City, D. C., deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Benjamin F. Rittenhouse, of the District of Columbia

All persons interested are hereby notified to appear in this court on Friday, the 20th day of February next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

By the Court. W. S. COX, Justice.
Test: 4-3 H. J. RAMSDELL, Register of Wills.
GORDON & GORDON, Solicitors.

THIS IS TO GIVE NOTICE.

That the subscribers of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration c t. a on the personal estate of Chas D Gilmore, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 23d day of January, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 23d day of January, 1885

SAM'L R. ROND
4 3 JOB BARNARD,
Administrators, c t. a.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, this 24th day of January, 1885.

JAMES B HOUSTON vs MARY T. GARLAND ET AL. } In Equity, No. 8982.

Ordered, this 24th day of January 1885, that the offer of Ellen R. Goldsborough to purchase at private sale the east 24.23 feet front by depth of original lot 6, in square 121, and improvements, this day reported by the trustees herein, be, and the same is hereby accepted, and that said sale be, and is hereby ratified and confirmed, unless cause to the contrary be shown on or before the 24th day of February, 1885.

Provided, a copy of this be published once a week for three successive weeks prior to said day in the Washington Law Reporter.

The report states the amount of sales at $5,500.

W. S COX, Justice
A true copy. Test: 4 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphaos' Court Business. January 24, 1884.

In the case of Charles M Matthews, Executor, of Catharine J Magruder, deceased, the Executor aforesaid has, with the approval of the court, appointed Friday, the 27th day of February, A D. 1885, at 11 o'clock a m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor, will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 4 H. J. RAMSDELL Register of Wills.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber of Pittsburgh, Pennsylvania, hath, obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration c t. a on the personal estate of Alexander Murray, late of the U. S. Navy, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 13th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of January, 1885.

4-3 GEO. W, GUTHRIE,
WORTHINGTON & HEALD, Sol'rs. Adm'r c. t. a.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 21st day of January, 1885.

THOMAS J. FISHER. v. WILLIAM SHARON ET AL. } No. 9298. Eq. Doc. 24.

On motion of the plaintiff, by Messrs. Hillyer & Ralston, his solicitors, it is ordered that the defendants, Wm. Sharon and Sarah Althea Hill, otherwise Sarah Althea Sharon, cause their appearance to be entered herein on or before the first rule day, occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.
A true copy Test: 4-3 R J. MEIGS, Clerk

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 21st day of January, 1885.

ANN MARIA BOOTH, Complainant, v. CHARLES E. FRASER ET AL., Defendants. } No. 9185. Eq. Doc. 24.

On motion of the plaintiff, by Messrs. Linton & Darlington, her solicitors, it is ordered that the defendant, Martha Booth cause her appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.
A true copy. Test: 4-3 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 20, 1885.

In the matter of the Estate of Jane Rutledge, late of Niles Berrien, Co., Michigan, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Thomas W. Rutledge, who requests that letters be issued to Charles A. Chapin.

All persons interested are hereby notified to appear in this court on Friday, the 13th day of February next, at 11 o'clock a. m., to show cause why the said Letters of Administration, on the estate of the said deceased should not issue to Charles A. Chapin as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.
Test: H. J. RAMSDELL, Register of Wills.
JAMES R. COOK and N. DUMONT, Solicitors Rooms 3 & 4, 1331 F Street, N. W. 4-3*

IN THE SUPREME COURT OF THE DISTRICT OF Columbia

FRANCIS H BROWN v. GEORGE A. BROWN ET AL. } Equity No. 9011. Docket 24

Fendall E Alexander, the trustee herein, having reported that he has sold part of lot numbered seven (7) in square numbered Two Hundred and Eleven (211), as described in the bill of complaint herein, containing 3230 square feet, at eighty (80 c) cents per square foot, aggregating the sum of $2,584 00 to one Anna E. Tracy, and that said purchaser has offered to assume the payment of the taxes and assessment thereon with the accumulated penalties and interest thereon, amounting to the sum of $781 35, as set forth in his said report, and to pay the balance of said purchase money, to wit: $1 802 65, as stated in said report; it is, this 21st day of January, A. D 1885, by the Court, ordered and decreed, that said offer be, and the same is, hereby approved, and said sale be, and the same is, hereby ratified and confirmed, unless cause to the contrary thereof be shown herein on or before the 21st day of February, A D 1885.

Provided a copy of this order be published once a week for three successive weeks, before said last mentioned day, in the Washington Law Reporter.

By the Court. W. S COX, Justice.
A true copy. Test: 4-3 R. J. MEIGS, Clerk.

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Legal Notices.

THIS IS TO GIVE NOTICE,
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration, on the personal estate of Agnes Bryant, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of January, 1885.

H. RANDALL WEBB,
3-3 Administrator.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Adaline Birge, late of Prince George's County, Md., deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of January, 1885.

3-3 ANNA B. SMITH.
NEWTON & BERRYMAN, Solicitors. Administratrix

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January, 12, 1885.

In the matter of the Estate of John Ashley, late of Staunton Station, Tenn deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Philip H. Sheridan, Lieutenant-General, U S. Army.

All persons interested are hereby notified to appear in this court on Friday, the 6th day of February next, at 11 o'clock, a. m , to show cause why the said will should not be proved and admitted to Probate, and Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WALTER S. COX, Justice.
Test: 3 H. J. RAMSDELL, Register of Wills.
JAMES LOWNDES, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 16th day of January, 1885.

HOPKINS ET AL. v. HOPKINS ET AL } No. 8953. Equity.

On motion of the plaintiff, by Mr. J. J. Johnson, their solicitor, it is ordered that the defendant, James Hall, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default,

By the Court. W S. COX, Justice.
A true copy. Test: 3-3 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 17h day of January, 1885.

AMANDA HURLEY v. JOHN P. HURLEY. } No. 9291.

On motion of the plaintiffs, by Mr. M. J. Ford, her solicitor, it is ordered that the defendant, John P Hurley, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Asso. Justice.
True copy. Test: 3-3 R. J. MEIGS, Clerk

THIS IS TO GIVE NOTICE
That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of John Moore, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 13th day of January, 1885.

JOHN F. HANNA,
3-3 ANDREW B. DUVALL.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, January 17, 1885

In the case of William H Veerhoff, Executor of Augusta Asmussen, deceased, the Executor aforesaid has, with the approval of the court, appointed Friday, the 6th day of February A. D. 1885, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 3 H. J. RAMSDELL, Register of Wills.
REGINALD FENDALL, Solicitor.

THIS IS TO GIVE NOTICE.
That the subscriber, of Washington, D C., hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of administration on the personal estate of John T. Rickard, late of Hyattsville, Md , deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 27th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of December, 1884.

3-3 LOUIS D. WINE.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

FRANK L BEACH v. COLUMBUS BEACH ET AL. } No. 8464. Eq. Doc. 22.

William W. Boarman, trustee, having reported to the court that on the 30th day of December, A. D 1884, he sold to F. Bernheimer part of Sub-lot 19 in Square No. 265, fronting on 14th street southwest twenty (20) feet and running back thirty nine (39) feet four (4) inches at and for the sum of $305:

It is by the court this 2d day of January A. D. 1885, ordered, adjudged and decreed that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 3d day of February, A. D. 1885; provided a copy of this order be published once a week for three successive weeks prior to said last-mentioned date in the "Washington Law Reporter.,"

W. S. COX, Justice.
A true copy. Test: 1 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 9, 1885.

In the case of Hosea B Moulton, Adm'r of George William Thompson deceased, the administrator aforesaid has, with the approval of the Court, appointed Friday, the 6th day of February A. D 1885 at 11 o'clock a. m , for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

Test: 2 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 6th day of January, 1884.

TAYLOE ET AL v. WARREN ET AL. } No 9269. Eq. Doc. 24.

On motion of the plaintiffs, by Mr. Wm. Tayloe Snyder, their solicitor, it is ordered that the defendants, Eugenia Phœbe Warren and George B Warren, her husband, Mary Calmes Perry, Thornton Tayloe Perry, Edward Tayloe Perry Estelle Tayloe Paine, John Paine, and Ogle Tayloe Paine, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default

By the Court. W. S. COX, Justice.
A true copy. Test: 4-3 R. J. MEIGS, Clerk.

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Washington Law Reporter

WASHINGTON - - - - - - February 7, 1885.

GEORGE B. CORKHILL - - - EDITOR

IN THE trial of the case of A. Snodgrass v. Treasurer, commenced about the middle of January, in the court of common pleas of Franklin county, Ohio, to recover taxes paid under the Scott Liquor Law, the court, Judge Evans presiding, took the case from the jury, and directed a non suit to be entered, because the plaintiff had failed to show that the payment of the tax on his part was involuntary. The court held that the fact of payment of the tax under protest, and suit brought within the year's limitation, was not sufficient to entitle the plaintiff to recover, but that involuntary payment must also be shown. Also, that the mere entry, by the treasurer of the tax assessment in his books did not constitute duress; that the treasurer must be shown to have done some act to enforce the collection of the tax, in order to make the payment thereof by the plaintiff involuntary. The effect of this ruling will be to throw out a great many of those cases brought for this same purpose. In this case the plaintiff was allowed to amend, by showing, that in obtaining the written consent of his landlord to carry on the business, as required by law, he was compelled to agree to the condition that his lease should determine if he failed to pay the Scott Law tax promptly, and that, therefore, by reason of this condition, he was compelled ty pay the tax to the treasurer without any action on his part to collect it. (See Parker v. Cincinnati, 11 O. S., 534.)

THE legal journals of England are now engaged in discussing the question whether a judge has the power to override the verdict of a jury, as Mr. Justice Manisty did in the Adams–Coleridge libel suit. Although in this case the court seems to have followed the practice which has long obtained in English courts of law, yet it is doubted whether, under the present rules of court, such a practice is admissible. And it is said that this doubt is greatly strengthened by the decision of the court of appeal in Perkins v. Dangerfield (decided in 1879, but unreported), which seems to hold that the present rules give no such power as was adopted by the court in this case. The question is examined at length in the London *Law Times*, and in conclusion there it is said, that all those difficulties which are set out, seem to show that the framers of the rules never contemplated the practice under consideration, and that the judgment of the court of appeal in Perkins v. Dangerfield is still binding. This would indicate that the opinion of the English Bar, is that, in this case, the court exceeded its legitimate powers, and trespassed on the rights of the jury, greatly to the prejudice of the plaintiff.

THE question as to the measure of proof required to establish the defence of insanity on the trial of an indictment for homicide recently came before the Supreme Court of Iowa, in the case of State v. Jones (20 N. W. R., 470; S. C., 17 N. W. R., 911), and the judges were divided in opinion. A majority of the court (Rothrock, C. J., and Seavers, J., dissenting) held that the defence must be made out by a preponderance of evidence; that is to say, the defendant, upon whom rests the burden of proof, must *turn the scale* by evidence which creates a *probability* that he was insane. On this question, whether the defendant must make his insanity appear by a preponderance of evidence, or whether it is sufficient that he raise a reasonable doubt of it at the time of the commission of the homicide, there is a great deal of conflict of opinion, and this case adds thereto.

A DECISION was rendered a short time ago by the Supreme Court of New York, in the *quo warranto* suit brought by Edward T. Wood to test the title of E. Henry Lacombe to the office of Counsel to the Corporation. The court decide that Mr. Lacombe lawfully held the office up to the 14th of January, and was then lawfully appointed, and is, therefore, entitled to a judgment confirming his title to the office. (Opinions by Justices Davis, Brady and Daniels.)

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The Sharon divorce case, which has furnished so much matter for public talk and curiosity, has ended, for a time at least, by the decision of Judge Sullivan in favor of the plaintiff. Public opinion seems to have been adverse to the plaintiff, and, at the same time, no sympathy whatever has been shown for the defendant. He will appeal to the Supreme Court of California; and, it is said, whether he will accomplish anything by so doing, would seem to depend upon the weight which the Supreme Court, under the Code of that State, gives to the decisions of the district courts on questions of fact in divorce cases.

Supreme Court District of Columbia

General Term.

Reported by Franklin H. Mackey.

Decided January 19, 1885.
The Chief Justice and Justices Mac Arthur and James sitting.

Law. 22,388.

An agreement of the parties by their attorneys to refer a pending cause to a special referee, "whose award, when approved by the court, is to be its judgment," is not within the Maryland act, and if the court disapprove the award, and make an order setting it aside, such order is not appealable.

C. Maurice Smith and S. S. Henkle for plaintiff.

Enoch Totten for defendant.

Mr. Justice Mac Arthur delivered the opinion of the court.

In the case of Olivia Belmont v. the Washington and Georgetown Railroad Company, I am authorized to announce the conclusion of the court.

The following minute is taken from the journal of the court; "By agreement of parties, by their respective attorneys, the case is referred to James G. Payne, esq., whose award, when approved by the court, is to be its judgment."

No order of reference was prepared by the attorneys, and we suppose they made their oral application, and the clerk caught the decision of the court as well as he could and made this minute of it; but we cannot find that any formal order was signed by the court.

Mr. Payne, it appears, acted upon the order, took testimony and made an award, in which the facts that he found established by the testimony are stated at large with his conclusions of law. A motion was made to enter judgment upon this award. Exceptions were then filed by the plaintiff, against whom the award was rendered, in which the finding of facts as well as conclusions of law are disputed. The judge holding the circuit denied the motion to enter judgment, sustained the exceptions to the award and set it aside. From that order an appeal is taken to this court, and it is now before us on motion to dismiss that appeal, on the ground that the order was not appealable.

It is to be observed in the construction of this minute, that the award is to be subject to the approval of the court before it becomes its judgment. The limitation, therefore, imposed by the order itself is that the judgment, in the discretion of the court, is to be expressed by way of approval before it can become the final determination of the case. If it had been a reference to arbitration under the rules of the court, or under the Maryland act which authorized reference to arbitration, the effect of the award would have been entirely different from the one contemplated by this order. We can only consider this order as authorizing the referee to report the case to the court for its judgment, and as in the nature of a special verdict or an agreed statement of facts. This appears also to have been the construction put upon it by the referee himself, for he reports at large and in great minuteness the facts established by the testimony and the conclusions of law which he thinks ought to be applied to them, so that the court might see the whole case and approve or disapprove of his award. The court has exercised that discretion, and held that it must be set aside.

Now it may be that the attorneys intended to make a reference to arbitration. We know very well what the effect of an award of arbitrators is; that it is final and conclusive upon all the facts in the case, and the controversy cannot be inquired into either by the parties or by the court. The duty of the court is a merely formal

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act then, or nearly so, to enter judgment upon the award. And that makes an award of an arbitrator a valuable document—a practical determination of a controversy. The only way in which the award of arbitrators can be impeached, according to the act of Maryland, is on the ground of fraud, malpractice, or where notice has not been served upon the parties, etc., and if a party desires to file exceptions it must be done with proof of this description in order to impeach it, otherwise the order must stand and this appears to be the result of our own rules upon the subject. We provide that where a copy of the award has been served upon the party the court must find judgment upon it.

This is a mere reference to a special referee subject to the approval of the court. We think the order upon the award was entirely within the discretion of the court and its judgment upon it is not appealable.

We have been referred, however, to a former case, precisely like the present, which was determined the other way, and the attorney who argued in favor of the appeal, stated that he acted in this case upon the authority of that former decision. We can only say that none of the judges have any recollection of that point being raised in that or any other case. It does appear that the minute of reference was precisely like the one in the present case; and that the court did enter upon an examination into the merits, and reversed the order made below. It does not appear that this point was made. It is, therefore, one of those vague, floating authorities which exist in the traditions of the Bar, and which can scarcely have foundation in a well-considered and deliberate judgment upon a point clearly presented for adjudication.

The opinion of the court is that the motion to dismiss the appeal must be allowed.

Will: Contract Concerning Realty; Construction of Instruments.—An instrument, in order to be a testamentary writing, must be ambulatory or revocable in its nature; if upon its delivery, interests vest, it cannot be construed as a will. [Book v. Book; Sup. Ct. of Pa.]

Computation of Time.

In McCulloch v. Hopper, Passaic Circuit (N. J.) October 8, 1874, 7 N. J. L. J. 336, in laying down the rule for the computation of time in legal actions, Judge Dexon said that where the time is to be computed from a date, the day is excluded, and when it is to be computed from an event or an act, the day is included, and that this rule was promulgated as long as three hundred years ago in Clayton's Case, 5 Coke, and that from that time till after the American Revolution it was received, without question, as the general rule. "It went upon the idea that where you compute time from a date you take in no part of the day; the day must be ended when you go from it. But when you compute time from an event or an act, a part of the day in which it happened must have followed, in all probability, the completion of the act or the event, so you have to take in part of the day in counting from the event. But the law not regarding a day to be divided into fractions, if you take a part of a day you take the whole of that day, referring the act to the beginning of the day, on the same principle that in former times anything that occurred during a term of court was regarded as taking effect from the first day of the term. So an event occurring upon a day was regarded as occurring upon the beginning of the day; the whole of that day was counted. That was the rule promulgated in the reign of Queen Elizabeth, and recognized as the rule, I think, till after the American Revolution.

"Lately, however, the cases seem to be tending in the other direction with reference to the computation of time from an event, and to go upon the idea that inasmuch as the law does not recognize fractions of a day, the day must be regarded as a single stroke of time, and when an event occurs upon a day, it must be regarded as covering the whole day, commensurate with the day; that it cannot cover a mere fraction of the day, because the law does not recognize the fraction of a day, so that reckoning from that event is the same as reckoning from that day." This view of the rule is sanctioned by the English courts of chancery in Lester v. Garland, 15 Vesey 248, in the English Exchequer, in Webb v. Fairmaner, 3 M. & W., 473. It was approved also in the United States Supreme Court in Sheets v. Selden, 2 Wall., 177, 189. The cases are quite fully collected and discussed in approval of the rule by Chief Justice Gray, in Bemis v. Leonard, 118 Mass.—*American Law Journal.*

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The Duties of Lawyers.

Supreme Court N. Y.—General Term.

WILLIAM C. BAUR *vs.* JOHN F. BETZ.

Appeal by Henry Daily, Jr., attorney for the plaintiff, from an order made by Mr. Justice Lawrence imposing upon Daily all the costs and referee's fees on the reference which was ordered to ascertain the whereabouts of the plaintiff, so that an injunction could be served upon him.

It is the duty of an attorney, as an officer of the court, to furnish all information required by the court, in order to carry out its process, without reserve.

Where an attorney, in answer to an order directing him to state the whereabouts of the plaintiff, so that an injunction could be served upon him, made a statement of the residence of the plaintiff which was misleading.

Held, That the attorney was properly charged with all the expenses of the reference to ascertain the plaintiff's whereabouts, on the ground of misconduct.

If it be necessary to teach the lesson that a member of the bar belongs to a high and honorable profession, and to teach it in the manner in which that instruction is conveyed by the result of this proceeding, it must be done.

The duties of attorneys to the court as contrasted with the duties to their client stated.

BRADY, J.: This action was commenced for the dissolution of a copartnership and an accounting, and the summons served on the 13th of January, 1883. On the 27th day of January following, an order was obtained *ex parte* appointing the defendant temporary receiver of the partnership effects and granting an injunction restraining the plaintiff and his attorney, among other things, from interfering with such effects, and requiring the attorney to show cause, on January 30th, why he should not disclose to the attorney for the defendant the then present residence or abode of the plaintiff—the object of which undoubtedly was to enable him to serve a copy of the injunction. The motion was finally argued, and the injunction and the appointment of the receiver made permanent. In that proceeding the plaintiff's attorney made an affidavit, in which, among other things, he stated as follows:

"I further aver that the plaintiff's residence was formerly No. 140 East Fifty-eighth street, this city, but I am informed that his residence is now at 317 East Seventy-ninth street, this city, and I am further informed that these facts are well known to the defendant."

The Special Term, also, in the order confirming the appointment of the defendant as receiver and containing the injunction, made a reference to Abram Kling, Esq., to take proof of the whereabouts of the plaintiff, the statement of his attorney as to his residence not being satisfactory, and some dispute as to the attorney's statement having arisen and being urged. The order of reference is not before us on this appeal, but, according to the report of the referee, it was quite comprehensive, because it provided that he should take proof of the then present residence or abode of the plaintiff, and as to his whereabouts, and also testimony as to the transactions between the plaintiff and his attorney, and between the plaintiff and any other person, with the view of ascertaining the fact as to where the plaintiff could be found, and also to examine such witnesses as might be produced before him in respect to other facts contained in the affidavits used on the motion which resulted in the order of reference.

The testimony taken by the referee is very voluminous, extending to two hundred and forty-five pages and upwards. The plaintiff was represented by Hamilton Odell, Esq., and the attorney appeared on his own behalf. The referee found that the defendant had sought with the greatest diligence to ascertain the whereabouts of the plaintiff, and in every way known to him tried to discover where he could be found; that he was last seen in the city of New York, on or about the 25th of January, 1883, at the corner of Fifth avenue and Forty-sixth street, in front of the residence of and in company with his attorney, from which place he proceeded to the "Windsor" or "Taylor's" Hotel, in Jersey City (the hotel being known by both names at different periods), where he registered under the name of Bennett, and which place he left on the 26th of January, the day following. The referee further reported that he was unable, from the evidence furnished him, to report as to where he went or his then present whereabouts.

An examination of the testimony shows that it was not strictly confined to the chief question which was designed to be the subject of investigation—namely, the then present residence or whereabouts of the plaintiff—but at the same time it cannot be said that the referee was not justified in taking a great deal of the evidence which was given under that portion of the order already mentioned, which authorized him to examine the witnesses produced before him in reference to such other facts as were contained in the affidavits on the motion which resulted in the order of reference.

The statement in the affidavit of the attorney, as to the whereabouts of the plaintiff, was disingenuous. It was, as we have already seen, that the plaintiff's residence was at 317

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East Seventy-ninth street, in this city, when he knew, as he himself admitted during the investigation before the referee, that his client had gone to Jersey City, and was staying at a hotel there, and under an assumed name. It may be true that at the time of his client's departure he did not know in what direction he went, and it may be true, also, that at the time of his examination he did not know to what place his client had gone, or where he was staying; but the relations existing between the two, and the proceedings between them, render this exceedingly improbable and certainly justify the conclusion that the attorney did not respond to the application made in reference to the whereabouts of the plaintiff as he should have done, and as he was bound to do as an officer of the court.

It cannot be questioned that the service of the injunction upon the plaintiff was very important to the protection of the defendant's interests, and it was just as much his duty to aid in the administration of justice in that respect as it was to protect his client's interests. As an officer of the court he was bound to deal with it in all respects without reserve, and to obey its orders implicitly unless appealed from and reversed on appeal. If he had stated in his affidavit that his client had resided and, he believed, continued to reside at the place named in this city, but had been sojourning in Jersey City under an assumed name, and that he had parted from him on the 25th of January, and then stated what he believed to be his intentions, his conduct would have appeared upon the record in reference to the subject unimpeachable. He suppressed, however, these important facts, and it would seem with the intention of screening his client. In his zeal he may have supposed that this was his duty professionally, but it was a great mistake if he entertained any such view, and the result is the imposition of costs upon himself and his client in the proceeding which a candid and honorable revelation would not only have avoided but which would have redounded to his credit as an officer of the court.

If it be necessary to teach the lesson that a member of the bar belongs to a high and honorable profession, and in the manner in which that instruction has been conveyed by the result of this proceeding, it must be done.

The court has power to impose the payment of costs, and it is impossible for us to say, with any justice to the learned judge who made the order in that respect, that the discretion rested in him was in the slightest degree abused. On the contrary, we think, he was quite justified in making the order, notwithstanding that it must be admitted some of the evidence taken would seem unnecessary upon the main subject which the reference was intended to investigate.

Under these circumstances, there is nothing left for us but to affirm the order.

Ordered accordingly.

Trial by Jury.

Judge David Davis, in a paper read before the Illinois Bar, says on the subject of trial by jury:

"The antiquity of the institution of the jury, does not in itself prove that it should be retained. But it is a strong argument in favor of its retention, and throws the burden of proof upon those who assert the contrary. A system by which the concurrence of the people in the administration of the law is required, of necessity influences beneficially the national character. This is evident to every intelligent man who compares the nations who possess ii with those who are without it. It is conducive of self-government, which is the basis of our civilization. The sense of responsibility of the community is increased when each individual in it is informed that if qualified he may be called upon, at any time, to discharge the important functions that devolve upon juries. This requirement of qualification teaches him that in order to fulfill the duties he owes to society, he must fit himself to perform the trust intelligently. The jury trial also inculcates fair dealing. The juryman of to-day may have a lawsuit to be tried to-morrow, and he learns to judge men on the same plan that he expects to be judged by them. The average citizen associates his ideas of justice with the trial by jury. By means of it he becomes accustomed to judicial proceedings and gets his knowledge of the laws, and is taught by it to respect them and the decisions of courts, and to submit to authority. We consider the freedom of the press as among the highest of social blessings. There would be no occasion for exultation on this subject if there had been no trial by jury. As an educator of the people lies 'its greatest advantage' according to M. Tocqueville. He calls it a school into which admission is free and open, which each juror enters to be instructed in his legal rights, and he says: 'I regard it as one of the most efficacious means that society can employ for the education of the masses.' And Lord John Russell, in commenting on the English government, says: 'It is to trial by jury, more than by representation (as it at present exists), that the people owe the share they have in the govern-

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ment of the country: and it is to trial by jury also that the government mainly owes the attachment of the people to the laws—a consideratton which ought to make our legislators very cautious how they take away this mode of trial by new, trifling and vexatious enactments.' Without pursuing the subject further, I trust I may be pardoned for saying, that I am reluctant to lay hands on an established institution, which has stood the test of centuries, and which the first nations of the earth regard as their most precious jewel."

Supreme Court of Nevada.

SULTAN ET AL. *vs.* SHERWOOD.

Filed December 20, 1884.

New Trial: Surprise; Evidence; Review of.—On a motion for a new trial on the ground of surprise, the district court is the sole judge of the credibility of the evidence, and the determination of the motion will not be disturbed if there is evidence to sustain it.

The Same: Mistake as to Material Fact.—A new trial may be granted for a mistake as to a material fact, if the defeated party had no knowledge thereof until after the case was closed and ready for submission to the jury.

Appeal from an order of the Sixth Judicial District Court, Lincoln county, granting plaintiffs a new trial. The opinion states the facts.

BELKNAP, J.: This is an action of trover. Plaintiffs claim ownership of certain personal property by bill of sale and possession thereunder, from John Kinney, in consideration of an indebtedness existing between them.

Defendant justifies the taking as sheriff under an execution issued upon a moneyed judgment against Kinney; admits a pretended transfer of the property to plaintiffs, but claims it to have been fraudulent as against the execution creditors. Defendant recovered judgment. A new trial was granted on the ground of surprise. From this order defendant has appealed.

At the trial, plaintiffs, for the purpose of establishing a consideration for the transfer, introduced in evidence an account between themselves, as merchants, and Kinney, showing the purchase by him of many articles of general merchandise at various times, advancements of money to his use, interest upon overdue balances, some credits, but a general indebtedness of two thousand and thirty-six dollars and sixty-two cents. The item of interest was eight hundred and seventy-five dollars and one cent. This item contained an error against Kinney of about seven hundred dollars. The charge for interest should have been one hundred and forty-four dollars and fifty-four cents, according to the computation made by appellant. The account showing this item was introduced in evidence upon two trials of this cause, but the error, although patent, escaped the attention of the court, counsel and jury at the first trial. At the second trial the district court was not advised of the error until after the submission of the cause to the jury, and is of opinion that it did not appear to the jury until after they had retired to deliberate upon the case. The affidavit of Louis Sultan, one of the plaintiffs, states, among other things, that he "is informed and believes that the only reason which the said jury had and based their verdict dict upon, against said plaintiffs, was the fact which was for the time discovered by the said jury, in the jury room, after the said jury had retired to deliberate upon their verdict, that there was a large mistake in favor of said plaintiffs in the computation of interest in their (plaintiff's) account with John Kinney, from whom they purchased the property described in the complaint in said action.

"And affiant further says, that he did not know of such mistake until the testimony in the case had been closed, and the same was ready to be submitted to the jury, and, therefore, could not have informed his attorneys in relation to the same.

"And affiant further says, that said account was made up on the thirteenth day of June, A. D. 1882, by Louis Jacobs, a son of one of the plaintiffs, and a graduate of Healds' Mercantile College, and in whom affiant placed confidence as a correct accountant; and that affiant, being engaged in business at Bristol at the same time, and very busy, accepted the said account as correct, and never examined the same to detect any errors therein; and that if he had known of such mistake before said cause had been submitted to said jury he could have explained the same so as to show to said jury that neither himself nor Mr. Jacobs, his co-plaintiff, was guilty of any fraud in the transaction."

Counter-affidavits were presented by defendant raising an issue of fact as to the time when plaintiff became aware of the error.

The district court is the sole judge of the credibility of evidence upon motions of this nature. It determined the controverted question in favor of the plaintiffs, and as there is testimony sustaining the finding, we cannot disturb it.

The only matter open for consideration is whether the affidavit of Sultan sets forth a state of facts entitling plaintiffs to a new trial.

It was the duty of Sultan to have informed he court and jury of the error in the compu

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tation of interest at the earliest practicable moment after its discovery. A party cannot be allowed to take the chances of success, and, upon the rendition of an adverse verdict, obtain a new trial on the ground of surprise.

The affidavit states "that he (Sultan) did not know of such mistake until after the testimony in the case had been closed and the same was ready to be submitted to the jury."

The language of the affidavit—that the cause was ready to be submitted to the jury—implies that everything had been done by way of introduction of evidence, argument of counsel and instruction by the court necessary to an understanding of the issues involved, and that the only act remaining to be performed was to transfer the further consideration of the cause to the jury.

The submission of a cause under such circumstances is a mere momentary act, generally contemporaneous with its preparation for submission.

The affidavit bears out the view that no time for deliberation or action elapsed, and states that because he learned of the error as set forth, plaintiff "could not have informed his attorneys in relation to the same." It may well have been that learning of the error at the conclusion of the trial, plaintiff did not have a reasonable opportunity to act further in the matter except upon motion for a new trial.

It is extraordinary that the mistake should have escaped the attention of counsel upon each side at both trials. This, however, appears to be fact; and a matter unknown to the court, and upon which the verdict may have been principally predicated, was not investigated.

We think that the ground of surprise, within the meaning of the statute, has been established, and that plaintiffs were not guilty of laches.

The order of the district court is affirmed.

USE OF NAVIGABLE RIVER—DAMAGE TO CHAIN OF FERRY.—In opinion of the Supreme Court of the Colony of Victoria, holds that there is no difference between a navigable river and a public highway; that a river can be used by every one for the purpose of navigation at all times and states of the tides, and if a vessel could work her way along a river, she was at liberty to do so even though her keel was in the mud; and where chains, by which a ferry is worked, are caught and broken by a vessel lawfully using a navigable river, such chains must be considered to be an obstruction to the river.

Horse Railroads—Right to the Use of the Tracks

JAMES WARD *vs.* THE NEWARK & ORANGE HORSE CAR R. R. CO.

N. J. Supreme Court. Essex Circuit, Dec., 1884.

This was an action on the case for damages for injury to the plaintiff, caused by a collision of his wagon with one of the horse cars of the defendant on Market street.

The plaintiff was driving his wagon rapidly down Market street, Newark, on the down track. The defendant's car was leaving a siding at the station, and about to enter upon the down track, when the wagon and the car came together, the right wheel of the wagon striking the right hand corner of the front platform of the car, and the plaintiff was thrown forward upon the pavement and injured. The plaintiff claimed $1,000 damages.

DEPUE, J., charging the jury said, that he would tell them what were the rights of the parties at the place and time of collision. He referred to Camden Horse R. R. Co. v. Citizens Coach Co., 5 Stew., 76, and said: It is declared in the books that the right of the company to the use of the horse railroad is exclusive. This is true only in a qualified sense. It is true of a steam railroad company which condemns the land. No one else has a right to go there, but it is not so in the case of a horse railroad track; the people have a right to go there for passing and repassing. But when the railroad company has occasion to use the tracks for the purposes of its traffic, then the other travellers must give way. In this sense the right of the horse railroad company is said to be exclusive.

Another proposition to be considered is this: Although a person driving on a horse car railroad track is bound to give way, yet in order to put a person using the road in the wrong, the representative of the company must give the person reasonable notice in order to allow him to get out of the way. There is an ordinance in Newark on this subject, providing that the driver shall give ample notice of his approach, but this is the same as the common law rule.

Turning, now, to the evidence; the plaintiff admits that he saw the car start. This disposes of all question as to the notice. If this is so, the plaintiff cannot recover. Seeing the car is ample notice; no further notice need be given by the company.

If the plaintiff saw the car in time enough to have avoided the accident, he cannot recover. The driver of a horse car carrying the proper signals (the bells on the horses) has a right to assume that a person using the track will get out of the way, but the plaintiff says

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that when he saw the car start, he was very near the point of junction of the two tracks (about half the distance of the car from the same point), and if you believe that he honestly thought, and if you think the best way to avoid the horse car was, to hasten his speed and try to pass in front of it, so that the plaintiff was not guilty of negligence, then he may be entitled to recover. It becomes, therefore, important to decide where the plaintiff was when he first saw the car start, whether he was as near it as he says, or at the corner of the next street, as the defendant's witnesses testify. This is a question for the jury to decide. The judge then discussed the evidence in detail, and submitted the case to the jury.

The jury were out nearly all day, and brought in a verdict of $475 for the plaintiff. —*New Jersey Law Journal.*

Statute of Limitations.

Superior Court.—General Term.

CHARLES ENGEL, Appellant,

vs.

I. H. FISCHER, Respondent.

The Statute of Limitations will not run in favor of a debtor who comes into the State under an assumed name and continues therein under such assumed name with the intent to conceal himself from his creditors until his creditor acquires knowledge of the creditor's presence within the State.

B. LEWINSON for appellant.

W. & S. W. FULLERTON for respondent.

By the court. (VAN VORST, J.)—The defendant, residing in Austria, in the month of May, 1873, incurred the obligation as acceptor of the draft which is the subject of this action. In July, 1873, the defendant absconded from Austria and came to the City of New York,, and, "for the purpose of concealing himself from his creditors, assumed a fictitious name, and has ever since borne and been hiding under such fictitious name." The draft matured after the defendant took up his residence in New York. In April, 1882, the plaintiff, the owner of the draft, discovered defendant in the City of New York, living under his fictitious name, and demanded payment, which, being refused, he commenced this action.

Upon the trial the plaintiff's complaint was dismissed upon the ground that the action not having been commenced within six years after the cause thereof accrued, the same is barred by the Statute of Limitations.

The question arises whether the defendant was within the State during the period in question in the sense contemplated by the statute. It has been said that the Statute of Limitations "is a shield, and not a weapon of offense." I am quite sure that it was not designed to defeat justice. It should not shelter a man who, designing to defeat the vigilance of his creditors, comes into this State and conceals himself under a fictitious name, thus doing all in his power to prevent his creditors from reaching and prosecuting him within the time limited. In the construction of statutes the judge is vested with authority to disregard the letter in order, in a given case, to attain the ends of justice. This power has been repeatedly asserted and practiced upon by the highest authority. (Lieber's Hermaneutics, 5d ed., note, page 285, and cases cited).

If this defendant is shielded by the strict letter of the statute, he is certainly not by its true spirit and intent. (Code, sec. 401.)

In decisions with respect to the former Statutes of Limitations, the word "return," found in the section above cited, has been held to apply as well to a person coming from abroad, where he had resided, as to a citizen of this State going abroad for a time and then returning. (Fowler v. Aunt, 10 Johns., 464).

It has also been decided that the return must not be clandestine and with the intent to defraud creditors. The "return" must be public and under such circumstances as to give the creditors an opportunity, by the use of ordinary diligence and due means, to prosecute the debtor. (Cole v. Jessup, 10 N. Y., 96, 103; Randall v. Wilkins, 4 Dem., 577; Ford v. Babcock, 2 Sand., 518; Fowler v. Bailey, 3 Mass., 20; Little v. Blunt, 33 Mass., 359),

A coming into this State with the design of continuing therein, concealed under a fictitious name to avoid the pursuit of creditors, is in legal effect no coming at all until the day that he is discovered. The construction contended for by the respondent would make this statute, which was designed to prevent fraud, "the means by which it is made successful and secure."

The case of Poillon v. Lawrence (77 N. Y., 207), which arose under the Bankrupt law, has some analogy. In that case the bankrupt contracted a debt in one name, and obtained a discharge under a different name, designedly omitting in his proceedings reference to any fact which would disclose that he was the same person who was the debtor to the plaintiff. Rapallo, J., said: "It can hardly be supposed that any court would willingly sanction a fraud of that description."

Practically this defendant perpetrated a

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fraud equally obnoxious. Contracting a debt in a foreign country under his true name, he then comes to this country and lives under an assumed name, in this way to conceal himself from his creditors. Under such circumstances he cannot proclaim the protection of the Statute of Limitations.

Troup v. Smith (20 John., 32) and other cases cited by respondent's counsel, involve the question of a fraudulent concealment of the cause of action, but not of the person of the defendant; that is a wholly different question.

The judgment below is reversed and a new trial ordered, with costs to abide the event.—*N. Y. Daily Register*. Vol. 26, No. 132.

Supreme Judicial Court of Massachusetts.

COMMONWEALTH *vs.* JOSEPH BEAN.

Evidence offered at a trial for a criminal offence as to prior or subsequent acts of the defendant, may be competent evidence with reference to the crime charged.

This was an indictment charging the defendant with an assault with intent to commit rape. Evidence was admitted with reference to certain acts of the defendant which happened before and after the alleged assault was commited. To the admission of this evidence the defendant excepted.

By the court:

The burden was upon the government to prove that the defendant assaulted the prosecutrix with intent to ravish her. The evidence that the defendant, about a month before the assault, invited her to walk with him to the Berlin woods, and that, about five weeks after the assault, he followed her in the street at night, was admissible in the discretion of the presiding judge. These acts of the defendant had some tendency to show a continuing lustful purpose; and if so interpreted by the jury, they tended to show the intention with which the assault was committed. Com. v. Bradford, 126 Mass., 42; Magee v. Magee, 101 Mass., 111.

Exceptions dismissed.

COMMONWEALTH *vs.* WILLIAM HAYES.

Evidence as to a person's identity based on the sound of his voice is competent.

This was a trial upon an indictment for an attempt to destroy a building by exploding dynamite. At the trial in the superior court, evidence was introduced by the government, identifying the defendant as the person who attempted to blow up the building, through the sound of his voice.

To the admission of this evidence of identity, counsel for the defendant objected. The court, however, ruled that the testimony was competent, and admitted it. The defendant excepted to this ruling.

By the court:

The testimony of the witness Farnham, identifying the defendant by his voice, was competent. The weight of it was for the jury; but it was properly submitted to them, to be considered in connection with the other evidence of identity. Com. v. Williams, 105 Mass., 62.

Exceptions overruled.

Circuitous Carriage.

In a recent case in an English county court (Vicary v. Great Western Railway Co., London *Law Times*, November 29, 1884), it was held that where the label on goods delivered to a carrier, contained directions as to the route which were not contained in the carrier's receipt or bill of lading, or "consignment note," as it is termed in England, the carrier was bound only by the terms of the consignment note, and not liable for an injury occurring in the due performance of its terms, which would not have occurred if the directions on the label had been observed.

The consignment was of packages of fish, and the consignor labelled them to be sent by the South Western Company from Exeter, where that line connected with the defendant's line. Instead of that, the defendants carried them by their own route, which took a longer time, during which the fish lost their freshness. The boxes were labeled "For London and South Western Railway, Exeter. Mr. G. H. Vicary, fish salesman, Barnstaple."

The court held that this did not create a duty to deliver them to the South Western Railway at Exeter. "Labels on packages cannot limit or enlarge the duty imposed by the consignment note; they form no part of the contract unless referred to or embodied in the consignment note. But even if there were any misapprehension as to the labels or their effects, the company could not be deprived of the protection afforded by the condition of non-liability in the absence of willful misconduct on the part of the company's servants."—*N. Y. Daily Register*.

Contracts: Consideration; Mental Weakness; Undue Influence; Rescission.—Mere inadequacy of consideration is no ground for rescinding contracts. But great weakness of mind, coupled with gross inadequacy of consideration, will induce courts of equity to rescind contracts, where from these facts undue influence is inferable. [Crebs v. Jones; Sup. Ct. of Va., Sept. 25, 1884.]

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NOTES OF RECENT DECISIONS.

Parol Evidence as to Manner of Execution of Contract.—Parol evidence is admissible to impeach the validity of a written instrument; such evidence is not proper to change the terms of a written agreement, but the circumstances under which its execution is procured, may be shown for the purpose of showing whether the paper ever became a contract or not. That a contract exists must be shown by parol, and the proof of such existence may be attacked by proof that execution of the document is a nullity, as having been procured by duress or by fraud, etc. Where a plaintiff contended that a verbal understanding between him and a railroad station agent, was the contract, and the only one under which he made a shipment, and that an instrument signed by him and the agent was executed on his part under the belief that it was a mere pass over the road, and that belief was induced by the conduct and misrepresentation of the agent, while the defendant insisted that the instrument was a valid and binding agreement affording the only evidence of the contract between it and the plaintiff. *Held*, that it was a matter of proof which theory was correct, and that the only way of establishing the truth or falsity of either hypothesis, was by showing what passed between the parties. [Black v. Wabash, etc., R. R. Co., S. C. Ill., Sept. 27, 1884.]

Master and Servant: Negligence; Estoppel.—A manufacturer may choose the machinery he desires to use, be it old or new, and may control his business in his own way, provided he does no unlawful act. If the machinery is sound, well made and kept in repair, he will not be liable for an accident occurring to an employee, when the only ground alleged is that there is a better and safer kind used for the same purpose. Employers and their agents are only required to use ordinary care and prudence in protecting an employee against dangers not within his knowledge or observation.

An employer does not undertake, by an implied contract with an employee, that his machinery and appliances are safe beyond a contingency, nor that they are as safe as those of others using the same kind, nor that accidents shall not result to him from risks which perhaps others would guard against more effectually.

Where an employee, knowing all the danger there is in using a machine that his employers or their agents know, and being in such a position that, if any change occurs involving an increase of danger, he will be the first to see it, continues his services after such a change without a protest, it is at his option, and if injured, he is remediless. [Richards v. Rough. Sup. Ct. of Michigan, April, 1884.]

Carrier of Goods: Connecting Lines; Liability; Destruction of Goods in Warehouse by Fire.—Where a carrier receives goods to be transported over a connecting line to their final destination, its liability as a common carrier continues until the goods are delivered to the other carrier, and if they are destroyed by fire while in the warehouse of the first carrier, it will be liable for their loss, notwithstanding a custom that the connecting carrier shall inspect the books in which goods are entered as received, and take possession of and transport over its line goods intended to be so transported. [Condor v. R. R. Co.; Sup. Court of Mich.]

Mortgage: Release by Verbal Agreement.—A verbal promise by the mortgagee to the mortgagor to release one of several mortgaged tracts, in the event of a sale of the same by the mortgagor, cannot be enforced by a purchaser of such under execution, who, after his purchase receives a deed from the mortgagor without any consideration, where the land is not purchased in reliance on such promise, and the purchaser in no way altered his condition in expectation of such release. [Palmer v. Snell; Sup. Ct. of Ills., Sept. 27, 1884.]

Evidence: Burden of Proof of Negligence; Bailment.—In an action to recover for the baggage lost by a warehouseman, the plaintiff may rest upon proof of a failure to deliver—the burden is then upon the bailee to show that the failure was occasioned by a cause from liability for which he is protected by law or contract, and when he has so done in a way not to implicate himself in a charge of negligence, the plaintiff cannot recover, unless he shows negligence on the part of the bailee. [National S. S. Co. v. Smart. S. C. Pa. Nov. 10, 1884; 15 Pitts. L. J., 150.]

Action: Procuring Conviction by Perjury.—In an action against several defendants for conspiring together to procure the plaintiff to be indicted and convicted of a crime, by false and perjured testimony, and for causing him to be thus indicted and convicted by such false and perjured testimony, the gist of the action is the alleged tort, and not the alleged conspiracy, and the defendants are not liable. [Garing v. Fraser. S. J. C. Me. Feb. 23, 1884. Reporter's Advance Sheets.]

Statute of Frauds: Parol Gift of Realty, How Established.—Evidence that a parol gift

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of a house was made, may be shown by admissions directly made, before, about the time of, and after the donees had gone into possession, and that possession was taken in pursuance of the gift and not otherwise, is sufficient to establish a parol gift, and take it out of the Statute of Frauds. [Allison v. Burns; Sup. Ct. of Pa., Oct. 6, 1884.]

Statute of Frauds: Promise to Answer for the Debt of Another.—An agreement between the treasurer of a mining company and a bank, whereby the former promised to remit to the latter the amount of all drafts drawn by the manager of the mining company on, and paid by the bank, is not an agreement to answer for the debt of another, and need not be in writing. [De Watt v. Hartzel; Sup. Court of Colo., Nov. 14, 1884.]

Personal Injury: Contributory Negligence; Burden of Proof.—In an action to recover damages for an injury caused by negligence of defendant, although defendant pleads that such injury was caused by the negligence of the plaintiff, it is error to instruct the jury that the burden of proof is on defendant to prove such issue. [Hawes v. B. C. R. & N. R'y Co.; Sup. Court of Iowa, Sept. 17, 1884.]

Landlord and Tenant: Ejectment; Evidence; Estoppel.—A tenant may show in defence of proceedings against him to obtain possession, that his landlord's title has been divested by act of law since his tenancy commenced. In such a case the tenant is not estopped from denying his landlord's title. [Smith v. Crosland; Sup. Court of Pa., May 26, 1884.]

Master and Servant: Fellow-Servants; How Constituted.—Where one serves the same master, works under the same control, derives his authority and compensation from the same common source, and is engaged in the same general business, though it may be different grades or departments of the same common source, with another, they are fellow-servants. [H. & T. C. R'y Co. v. Rider; Sup. Ct. Tex., Oct. 24, 1884.]

Common Carrier: Boat Owners.—The owners and managers of a boat used for their own purposes and those of others who agree to pay certain rates for the transportation of their goods from one point to another, and who are not shown to have been held out as common carriers, cannot be declared to be such at the instance of any of such agreeing parties. [Flautt v. Lashley. S. C. La. 18 Rep., 652.]

He who desires to reach with speed the wished-for end, the winning post of the race, must, in his earlier days, have suffered and labored much, and borne the alternate extremes of heat and cold.—HORACE.

United States Supreme Court.

JAN 29, 1885.

No. 1030. Ellen C. Clawson et al. v. Alexander Ramsey et al.; and

No. 1031. James M. Barlow v. Alexander Ramsey et al. Argument concluded.

No. 184. The Chicago Life Insurance Company v. Thomas B. Needles, auditor, etc. Argued.

JAN. 30, 1885.

Wm. McNair, of Oil City, Pa.; Michael Bannon, of Baltimore, Md.; D. S. Alexander, of Indianapolis, Ind., and Stephen Curdett Hyatt, of New York city were admitted to practice.

No. 155 Charles E. Blake v. The City and County of San Francisco et al. Argued.

No. 186. The Mayor, etc., of City of Clarksville, v. United States ex rel., William R. Gause. Dismissed with costs.

No. 187. Samuel T. Morgan, administrator, etc., v. John C. Hamlet et al. Argued and submitted.

No. 191. Norman H. Pallock v. The Bridgeport Steamboat Company, etc. Argued.

FEB. 2, 1885.

Laura de Force Gordon, of California; Eugene A. Brewster, of Newburg, N. Y; Edward Osgood Brown, of Chicago, Ill., and William H. Rowe, of Washington, D. C., were admitted to practice.

Nos. 625 and 626. James W. Harvey et al. v. The United States, and the United States, appellant, v. James W. Harvey et al.; appeals from the Court of Claims. Judgment reversed and cause remanded with a direction to enter a judgment for the claimants for $40,093 77, as to item one in their petition filed August 30, 1876, and for $4, 574.80 as to item two in that petition. Opinion by Mr Justice Blatchford.

No. 171. Chauncey D. Spaids v. Dennis N. Cooley; in error to the Supreme Court of the District of Columbia. Judgment reversed with costs and cause remanded with a direction to reverse the judgment of the court in special term, with costs, and to direct that court to award a new trial. Opinion by Mr. Justice Blatchford.

No. 140. Kate J. Baylis, by her guardian ad litem, Robert R. Rhodes, v. The Travelers' Insurance Company, etc. Judgment remanded with directions to award a new trial. Opinion by Mr. Justice Matthews.

No. 902. Roy Stone v. Robert G. Chisolm et al. Judgment affirmed with costs. Opinion by Mr. Justice Matthews.

No. 1215. John Thornley v. The United States; appeal from the Court of Claims. Judgment affirmed. Opinion by Mr. Justice Woods.

No. 147. Lydia M. Fussell v. Eleazer P. Kendrick et al. Decree affirmed with costs. Opinion by Mr. Justice Woods.

No. 148. Lydia M. Fussell v. E. S. Hughes et al. Decree affirmed with costs. Opinion by Mr. Justice Woods.

No. 1083. The Mayor, etc., of the City of Quincy, v. The United States ex rel. Peter A. H. Jackson. Judgment affirmed with costs. Opinion by Mr. Justice Harlan.

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No. 143. The Illinois Pneumatic Gas Co. v. Joseph H. Berry et al. Decree affirmed with costs. Opinion by Mr. Justice Field.

No. 1115. Alfred Sully v. James N. Drenner et al.

No. 1116. Alfred Sully v. William R. Manning; and

No. 1117. Alfred Sully v. William R. Matthews. Decrees affirmed with costs. Opinion by Mr. Justice Miller.

No. 9. Original, ex parte. In the matter of Benjamin F. Bigelow, petitioner; petition for writs of habeas corpus and certiorari denied. Opinion by Mr. Justice Miller.

No. 1240. Andrew Stewart et al., etc., v. James H. Dunham et al. Motion to reinstate cause granted on payment of costs.

No. 1078. Wm. H. Fowle, jr., administrator, etc., v. Alexander Hay. Motion to dismiss denied.

No. 588. Thomas Poindexter v. Samuel C. Greenhow, treasurer.

No. 589. William L. White v. Samuel C. Greenhow.

No. 590. Samuel S. Carter v. Samuel C. Greenhow.

No. 826. S. Brown Allen, auditor, etc., et al., v. The Baltimore and Ohio Railroad Company.

No. 905. P. T. Moore v. Samuel C. Greenhow, treasurer, etc.

No. 1260. R. B. Chaffin v. William Taylor. Advanced and assigned for the third Monday in March next, at the foot of the call.

Mr. Justice Miller, acting Chief Justice, announced the following order:

"It is ordered by the court that mandates issue in all cases decided prior to the 1st day of January, 1885, when applied for, except where a petition for rehearing is pending, cases docketed and dismissed under the ninth rule, and cases Nos. 68 and 286."

Adjourned until Monday, March 2, 1885.

SUPREME COURT OF THE DISTRICT OF COLUMBIA

GENERAL TERM.

Feb. 2, 1885.

Sturtevant v. Carpenter. Decree below affirmed.
Hamilton v. Clarke. Decree below reversed.
Ridenour v. McClelland. Ordered on calendar.
Strong v. The District of Columbia. Motion for hearing submitted.
Keller v. Ashford. On hearing.

Feb. 3, 1885

Same. Argued and submitted.

Feb. 4 and 5, 1885.

Alley v. Lyon. On hearing.

Feb. 6, 1885.

Same. Argued and submitted.

IN EQUITY.—New Suits.

Jan. 31, 1885.

9316. James F. Newbold et al. v. Moses Coleman et al. To administer assigned estate. Com sols, Birney & Birney.

Feb 2, 1885

9317 John J. Albright v. Abraham H. Herr et al. Injunction and release. Com. sols., Worthington & Heald.

9318. Frank Morey, recr., v. Ernest Dichman et al. For discovery and injunction. Com. sol., N. Wilson.

Feb. 3, 1885.

9319. Joseph B. Collins v. The Citizens Building Company. Injunction and receiver. Com. sol., J. G. Bigelow.

Feb. 4, 1885.

9320. George Willard v John M Mueller et al. For injunction. Com. sols., Shellabarger & Wilson.

Feb 5, 1885.

9321. Thomas E. Walker et al v. Lewis A. Walker. For Acct. and injunction. Com. sol.; A. A. Lipscomb.

CIRCUIT COURT.—New Suits at Law.

Jan 31, 1885

25943 C W. Goff v. E. W Dennison Replevin. Piffs' atty., A. H. Jackson.

25944 Margaret Best v. Francis Hufty. Acct., $7,500. Piffs. atty., J. A. Smith.

25945 Eliza C. Hutchinson, adm'x, v Samuel P. Brown et al. Note, $3,000. Piffs attys, W. B. Webb and E. Totten.

25946. Same. Acct, $2685. Piffs attys, same

Feb. 3, 1885

25947. George Brown et al. v. the Wash. Gas Light Co. Damages, $5,000. Piffs atty, A. K Browne

25948. Alward G. Johnson et al. v. George C. Chipman. Appeal. Piffs attys., Edwards & Barnard

Feb. 4, 1885.

25949 United States Wind Engine & Pump Co v. Southern Maryland R R. Co. Acct, $1,081.22. Piffs attys. Cuppy and Duhamel.

Feb. 5, 1885.

25950. Edward T Hart et al. v. Henry H. Hempler. Acct., $109.26. Piffs. atty., H. W. Garnett.

PROBATE COURT.—Justice Hagner.

Feb. 6, 1885

Estate of T. A. Lazenby. Final notice issued.
Estate of Esther Ann Stott Will admitted to probate, and letters granted to F. T. Browning and bond fixed at $3,000
Estate of Henry Martin. Order granted for sale of personal property
Estate of John Ashley. Order appointidg Lieut. Gen P. H. Sheridan administrator, and bond fixed at $2,000
Estate of Thomas T. Scarff. Will admitted to probate.
Estate of Anne McKhight Will partially proven.
In re Olivia Jackson Order appointing Alexander Peyton guardian, and bond fixed at $300
In re Maggie G M. Thompson. Order appointing F. G. Thompson, and bond fixed at $100.
Estate of John Taylor. Order to sell furniture
Estate of Catharine Robinson Order appointing A. F. Fox administrator, and bond fixed at $.0 000.
Estate of Harriet A. Burne Order to show cause
Estate of John Volger Will filed.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of Washington City, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Samuel M. Barker, late of the District of Columbia, dec'd

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of December, 1884.

WILLIAM M. BARKER, Administrator.

R W. McPHERSON, Solicitor. 6 8

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 29th day of January, 1885.

MARK W SAMUEL, Complainant, v. BRAINARD H. WARNER ET AL. Defendants } No. 9281. Eq. Doc. 24.

On motion of the complainant, by Mr. E H. Thomas, his solicitor, it is ordered that the defendant, Arnold Tawzer, cause his appearance to be entered herein on or before the first rule day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
True copy. Test: 6-3 R J. MEIGS, Clerk

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February, 6, 1885.

In the matter of the Estate of John B. Randolph, late of the United States Navy, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by John B. Randolph.

All persons interested are hereby notified to appear in this court on Friday, the 27th day of February next, at 11 o'clock, a. m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. ALEXANDER B. HAGNER, Justice.
Test: 6 H. J. RAMSDELL, Register of Wills.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February 6, 1885.

In the case of Francis M. Lazenby, Administrator of Thomas A. Lazenby, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 13th day of March A. D 1885, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 6 H J RAMSDELL, Register of Wills.

JOSEPH J. WATERS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business January 30, 1885.

In the case of Luther Martin the deceased adm'r of William Martin, deceased James S Edwards, the administrator w a., of the said Luther Martin, has, with the approval of the Court, appointed Friday, the 6th day of March, A D 1885 at 11 o'clock a. m, for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Administrator w a. will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

Test: 6 H. J RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Holding a Special Term for Orphans' Court Business. February 2nd, 1885.

In the case of James Riggins, Executor of Patrick Hanaphy, deceased, the Executor aforesoid has, with the approval of the court, appointed Friday, the 27th day of February A. D. 1885, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them; Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 6 H. J RAMSDELL, Register of Wills.

THIS IS TO GIVE NOTICE.

That the subscriber, of Washington, D C., hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of administration on the personal estate of John T. Rickard, late of Hyattsville, Md., deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 27th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of December, 1884

3-3 LOUIS D WINE.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business January 30, 1885.

In the matter of the Estate of Caroline Elizabeth Van Newkirk, late of the City of Washington, District of Columbia deceased.

Application for Letters of Administration on the estate of the said deceased, has this day been made by Benjamin F. Evans, of the City of Washington.

All persons interested are hereby notified to appear in this Court on Monday the 2nd day of March next at 12 o'clock, m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B HAGNER, Justice.

Test: H. J. RAMSDELL, Register of Wills.

E. B. HAY, Solicitor. 5-3

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Adaline Birge, late of Prince George's County, Md., deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of January, 1885.

3-3 ANNA B. SMITH.

NEWTON & BERRYMAN, Solicitors. Administratrix

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Archibald C Spalding late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of January, 1885.

5-3 LUCY SPALDING. Ex'x.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration d. b n, c. t. a, on the personal estate of Elijah W. Hager, late of Onondaga, N. Y., dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of January next; they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 28th day of January, 1885

5-3 JOHN TRIMBLE,

HAGNER & MADDOX, Sol'rs. Administrator d.b.n.,c.t a.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Joseph D. Harris, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of January, 1885.

ELIZABETH W. HARRIS, Executrix.

R F LEIGHTON, Solicitor 5-3

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Holding an Orphans' Court Jan 30, 1885.

In the matter of the Estate of Hamilton Hughes, late of the District of Columbia, deceased

Application for Letters of Administration on the estate of the said deceased, has this day been made by William H. Hoover, with the consent of the alleged next of kin.

All persons interested are hereby notified to appear in this Court on Friday, the 27th day of February next at 11 o'clock a m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B HAGNER. Justice.

Test: H. J. RAMDELL, Register of Wills.

BIRNEY & BIRNEY, Solicitors. 5-3

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration, on the personal estate of Agnes Bryant, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of January, 1885.

H. RANDALL WEBB,

3-3 Administrator.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 27th day of January, 1885.

THOMAS J FISHER vs. JOHN R TUCKER ET AL, Heirs of Thomas Tudor Tucker. } Equity. No. 9305.

On motion of the plaintiff, by Hillyer & Ralston, his solicitors, it is ordered that the defendants, H Tudor Tucker Fanny Bland Graham, J. R. Graham, Mary T. Magill, Evelina Powell, W. L Powell, Virginia Edwards, John E. Edwards, Elizabeth Dallas Tucker, Virginia B Tucker, Dallas Tucker, Hattie A. Tucker, Cassie D Brown, John Thompson Brown, John R. Tucker, Emma B. Tucker, Evelina T. Lucas, D. B Lucas, Nannie S McLaughlin, I Fairfax McLaughlin, St. George Tucker Brooke, Mary B Brooke, Frank J. Brooke, Gay Bentley Brooke, D. Tucker Brooke, Lucy Higgins Brooke, Henry L. Brooke, Elizabeth D. Brooke, Laura Beverly Bedinger, Everett W Bedinger, Elizabeth Gilmer Tucker, Walker Gilmer Tucker, Lizzie Edwards Tucker, Evelina Tucker, Luey Richardson, Robert B Richardson, Annie Tyler, Lyon G. Tyler, Eliza Taylor Tucker, Alfred B Tucker, Cynthia B T. Coleman, Charles W. Coleman, B. St George Tucker, Eliza C Tucker, Fannie B B. T. Taliaferro, Julia Clark Tucker, Nathaniel Beverly Tucker, Wm. Francis Peyton Tucker, John R. Bryan Delia Page, John R. Page, Fannie Carmichael, S W. Carmichael, Georgia B. Grinnan, A. G. Grinnan, John R Bryan, Jr., Margaret R Bryan, St. George Tucker C Bryan, Joseph Bryan, Isabel S Bryan, C. B Bryan, Mary S. C Bryan, Fannie Bland Brown, H. Peronneau Brown, Virginia C. Braxton, St George Tucker Coalter, Ada B Lewis Tucker, Virginia Tucker, Virginia Lewis Tucker, Francis M Tucker, Mary Thornton Tucker, and Nathaniel Beverly Tucker, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day, otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Asso. Justice.

A true copy. Test: 5 R J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Catharine Robinson, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of January, 1885.

MICHAEL BOYLAND, Administrator.

H. B. MOULTON, Solicitor. 5-3

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 30, 1885.

In the matter of the Will of Frances A. Lockwood, late of the District of Columbia, deceased

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Margaret M Lockwood.

All persons interested are hereby notified to appear in this court on Friday, the 27th day of February next, at 11 o'clock a m., to show cause why the said Will should not be proved and admitted to probate and Letters Testamentary on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B HAGNER, Justice.

Test: 5 3 H. J. RAMSDELL, Register of Wills.

HENRY M BAKER, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 27th day of January, 1885.

FREDERICK H. PAINE v. ELIZABETH M BURNETT, GEORGE H. BURNETT ET AL. } No. 9307.

On motion of the plaintiff, by Mr. Woodbury Blair, his solicitor, it is ordered that the defendants, Elizabeth M. Burnett, George H. Burnett, Alexander M. Burch and wife, Ellen Burch Brodnax and John Brodnax, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER Justice.

A true copy. Test: 5-3 R. J. MEIGS, Clerk

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding an Orphans' Court Jan 30, 1885.

In the matter of the Estate of Charles M. Murdock late of Arequipa, Peru, formerly of Province of Ontario, Canada, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Frederick W. Jones, at the request of decedent's next of kin.

All persons interested are hereby notified to appear in this court on Friday, the 27th day of February, next, at 11 o'clock m., to show cause, if any they have, why Letters of Administration on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: 5-3 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business January 30, 1885.

In the matter of the Estate of Mary Shannon, late of the District of Columbia, deceased

Application for Letters of Administration on the estate of the said deceased has this day been made by James Fullerton.

All persons interested are hereby notified to appear in this court on Friday, the 27th day of February next, at 11 o'clock a. m., to show show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B HAGNER Justice.

Test: 5-3 H. J. RAMSDELL, Register of Wills.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John Casey, late of the District of Columbia, deceased

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 30th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of January, 1885.

5-3 SAMUEL BIEBER,

LEON TOBRINER Solicitor. Administrator.

THIS IS TO GIVE NOTICE

That the subscriber of Washington City, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration d b. n., on the personal estate of William Martin, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of January, 1885.

5 CHARLOTTE A. MARTIN.

EDWARDS & BARNARD, Sol'rs Adm'x de bonis non.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia

WILLIAM BURGESS ET AL. v. HERMAN HOLLANDER ET AL. } No. 9.295, Eq. Doc. 24.

This cause being referred to me to state the debts of the defendant, Herman Hollander, and assets, notice is hereby given that I shall proceed under the said order of reference on Thursday, February fifth, 1885, at one o'clock p m., at my office, in the United States Court-house, at which time and place all creditors of the said Herman Hollander, and persons interested in the said matter, may appear and present their claims.

5-1 JAS. G. PAYNE, Auditor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 28th day of January, 1885

JULIA A SMITH v. MARIA JEFFRIES ET AL. } No. 9303, Equity.

On motion of the plaintiff, by Mr Woodward, her solicitor, it is ordered that the defendants, the unknown heirs of Clarissa Bruce cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.

True copy. Test: 5 R. J. MEIGS, Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 27th day of January, 1885.

WILLIAM SHARON
vs.
JOHN R TUCKER ET AL, Heirs of Thomas Tudor Tucker. } Equity. No. 9304.

On motion of the plaintiff, by Hillyer & Ralston, his solicitors, it is ordered that the defendants, H Tudor Tucker Fanny Bland Graham, J. R. Graham, Mary T. Magill, Evelina Powell, W. L Powell, Virginia Edwards, John E. Edwards, Elizabeth Dallas Tucker, Virginia B Tucker, Dallas Tucker, Hattie A. Tucker, Cassie D Brown, John Thompson Brown, John R, Tucker, Emma B. Tucker, Evelina T, Lucas, D. B Lucas, Nannie S McLaughlin, I Fairfax McLaughlin, St. George Tucker Brooke, Mary B Brooke, Frank J. Brooke, Gay Bentley Brooke, D. Tucker Brooke, Lucy Higgins Brooke, Henry L Brooke, Elizabeth D Brooke, Laura Beverly Bedinger, Everett W Bedinger, Elizabeth Gilmer Tucker, Walker Gilmer Tucker, Lizzie Edwards Tucker, Evelina Tucker, Luey Richardson, Robert B Richardson, Annie Tyler, Lyon G. Tyler, Eliza Taylor Tucker, Alfred B Tucker, Cynthia B T. Coleman, Charles W. Coleman, B St George Tucker, Eliza C Tucker, Fannie B B. T. Taliaferro, Julia Clark Tucker, Nathaniel Beverly Tucker, Wm. Francis Peyton Tucker, John R. Bryan Delia Page, John R Page, Fannie Carmichael, S W. Carmichael, Georgia B. Grinnan, A. G. Grinnan, John R Bryan, Jr., Margaret R Bryan, St. George Tucker C Bryan, Joseph Bryan, Isabel S. Bryan, C. B Bryan, Mary S. C Bryan, Fannie Bland Brown, H. Peronneau Brown, Virginia C. Braxton, St George Tucker Coalter, Ada B Lewis Tucker, Virginia Tucker, Virginia Lewis Tucker, Francis M Tucker, Mary Thornton Tucker, and Nathaniel Beverly Tucker, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day, otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Asso. Justice.
A true copy. Test: 5 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Holding a Special Term for Orphans Court Business. January 30th, 1885

In the case of Ira W. Hopkins, administrator of Thomas Riggles, deceased, the Adm'r aforesaid has, with the approval of the court, appointed Friday, the 20th day of February, A. D. 1885, at 11 o'clock a m for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 5-3 H. J. RAMSDELL, Register of Wills.
GEO. W. SALTER, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, January 30, 1885

In the case of Frank D Orme and John A. Hamilton, Executors of Jane E. Haswell, dec'd, the Executors aforesaid have, with the approval of the court, appointed Friday, the 27th day of February, A D 1885, at 11 o'clock a. m, for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

Test: 5 H J RAMSDELL, Register of Wills.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of William Middleton, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of January next; they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 19th day of January, 1885.

CATHERINE MARY MIDDLETON,
RICHARD P. EVANS, Solicitor. 4-3 Executrix.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business, January 24, 1885

In the matter of the Will of Levi S. Thomas, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased, has this day been made by Charlotte R. Thomas

All persons interested are hereby notified to appear in this Court on Friday, the 20th day of February next, at 11 o'clock, a. m., to show cause why said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S COX, Justice.
Test: H J. RAMSDELL, Register of Wills.
WM H BARTON, Solicitor. 4-3

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Luther Martin late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23d day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23d day of January, 1885.

JAS. S. EDWARDS,
Administrator. c. t. a.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 22d day of January, 1885.

HELLEN J. DURFEE
v.
GEORGE H. DURFEE. } In Equity, No. 9297.

On motion of the plaintiff, by Messrs Robert R. Shellabarger and Charles S. Wilson her attorneys, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. W. S COX, Justice, &c.
A true copy Test: 4-3 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Sara P. Copeland, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of January next: they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of January, 1885.

EDWIN B. HAY,
4-3 Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 16th day of January, 1885.

HOPKINS ET AL.
v.
HOPKINS ET AL } No. 8953. Equity.

On motion of the plaintiff, by Mr. J. J. Johnson, their solicitor, it is ordered that the defendant, James Hall, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. W S. COX, Justice.
A true copy. Test: 3-3 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of John Moore, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of January next; they may otherwise by law be excluded from all benefit of the said estate

Given under our hands this 13th day of January, 1885.

JOHN F. HANNA,
3-3 ANDREW B. DUVALL.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 6th day of January, 1884.

TAYLOE ET AL. v. WARREN ET AL. } No. 9269. Eq. Doc. 24.

On motion of the plaintiffs, by Mr. Wm. Tayloe Snyder, their solicitor, it is ordered that the defendants, Eugenia Phœbe Warren and George B Warren, her husband, Mary Calmes Perry, Thornton Tayloe Perry, Edward Tayloe Perry, Estelle Tayloe Paine, John Paine, and Ogle Tayloe Paine, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default

By the Court. W. S. COX, Justice.
A true copy. Test: 4-3 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Specia Term for Orphans' Court Business. January 24, 1885.

In the matter of the Estate of John Feldman, late of Washington City, D. C., deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Benjamin F. Rittenhouse, of the District of Columbia.

All persons interested are hereby notified to appear in this court on Friday, the 20th day of February next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

By the Court. W. S. COX, Justice.
Test: 4-3 H. J. RAMSDELL, Register of Wills.
GORDON & GORDON, Solicitors.

THIS IS TO GIVE NOTICE.

That the subscribers of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration c t. a on the personal estate of Chas. D. Gilmore, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 23d day of January, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 23d day of January, 1885.

SAM'L R. BOND.
4-3 JOB BARNARD,
Administrators, c t. a.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, this 24th day of January, 1885.

JAMES B. HOUSTON vs. MARY T. GARLAND ET AL. } In Equity, No. 8982.

Ordered, this 24th day of January 1885, that the offer of Ellen R. Goldsborough to purchase at private sale the east 24.23 feet front by depth of original lot 6, in square 121, and improvements, this day reported by the trustees herein, be, and the same is hereby accepted, and that said sale be, and is hereby ratified and confirmed, unless cause to the contrary be shown on or before the 24th day of February, 1885.

Provided, a copy of this be published once a week for three successive weeks prior to said day in the Washington Law Reporter.

The report states the amount of sales at $5 500.

W. S COX, Justice
A true copy. Test: 4 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphaos' Court Business. January 24, 1884.

In the case of Charles M. Matthews, Executor, of Catharine J. Magruder, deceased, the Executor aforesaid has, with the approval of the court, appointed Friday, the 27th day of February, A D. 1885, at 11 o'clock a m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor, will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 4 H. J. RAMSDELL Register of Wills.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber of Pittsburgh, Pennsylvania, hath, obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration c. t. a on the personal estate of Alexander Murray, late of the U. S. Navy, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 13th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of January, 1885.

4-3 GEO. W. GUTHRIE,
WORTHINGTON & HEALD, Sol'rs. Adm'r c. t. a.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 21st day of January, 1885

THOMAS J. FISHER. v. WILLIAM SHARON ET AL. } No. 9298. Eq. Doc. 24.

On motion of the plaintiff, by Messrs. Hillyer & Ralston, his solicitors, it is ordered that the defendants, Wm. Sharon and Sarah Althea Hill, otherwise Sarah Althea Sharon, cause their appearance to be entered herein on or before the first rule day, occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.
A true copy. Test: 4-3 R J MEIGS, Clerk

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 21st day of January, 1885.

ANN MARIA BOOTH, Complainant, v. CHARLES E. FRASER ET AL., Defendants. } No. 9185. Eq. Doc. 24.

On motion of the plaintiff, by Messrs. Linton & Darlington, her solicitors, it is ordered that the defendant, Martha Booth, cause her appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.
A true copy. Test: 4-3 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 20, 1885.

In the matter of the Estate of Jane Rutledge, late of Niles Berrien, Co., Michigan, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Thomas W. Rutledge, who requests that letters be issued to Charles A. Chapin.

All persons interested are hereby notified to appear in this court on Friday, the 13th day of February next, at 11 o'clock a. m., to show cause why the said Letters of Administration, on the estate of the said deceased should not issue to Charles A. Chapin as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.
Test: H. J. RAMSDELL, Register of Wills.
JAMES R. COOK and N. DUMONT, Solicitors Rooms 3 & 4, 1331 F Street, N. W. 4-3*

IN THE SUPREME COURT OF THE DISTRICT OF Columbia

FRANCIS H BROWN v. GEORGE A. BROWN ET AL. } Equity No. 9011. Docket 24

Fendall E Alexander, the trustee herein, having reported that he has sold part of lot numbered seven (7) in square numbered Two Hundred and Eleven (211), as described in the bill of complaint herein, containing 3230 square feet, at eighty (80 c) cents per square foot, aggregating the sum of $2,584 00, to one Anna E. Tracy, and that said purchaser has offered to assume the payment of the taxes and assessment thereon with the accumulated penalties and interest thereon, amounting to the sum of $781 35, as set forth in his said report, and to pay the balance of said purchase money, to wit: $1 802 65, as stated in said report; it is, this 21st day of January, A. D 1885, by the Court, ordered and decreed, that said offer be, and the same is, hereby approved, and said sale be, and the same is, hereby ratified and confirmed, unless cause to the contrary thereof be shown herein on or before the 21st day of February, A. D. 1885.

Provided a copy of this order be published once a week for three successive weeks, before said last mentioned day, in the Washington Law Reporter.

By the Court. W. S COX, Justice.
A true copy. Test: 4-3 R. J. MEIGS, Clerk.

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Washington Law Reporter

WASHINGTON - - - - - - February 14, 1885.

GEORGE B. CORKHILL - - - EDITOR

Interested Witnesses.

Lord Bramwell's bill on the law of evidence proposes to enable anyone who is charged with an offence to be a "competent witness" on every hearing at every stage. The wife or husband of the accused is in like manner to be a competent witness. And these provisions are to apply whether the accused is charged solely or jointly with others. But the accused is not to be compellable as a witness, nor is the wife or husband to be admissible as a witness without the consent of the accused, "unless so compellable heretofore." When an accused person is a witness, he is not to have the right to refuse to answer a question on the ground that it would tend to criminate him as to the offence charged, unless the court thinks fit to allow it.

This bill is, we understand, still under consideration in Parliament, having only passed a second reading.

The common law rules which excluded interested witnesses were, at root, inseparably connected with another rule, which is overlooked by the reformers of the law of evidence, namely, the rule that the jury are bound, as matter of law, to give their verdict in accordance with uncontradicted and unimpeached evidence.

Bentham, and those who have followed in his wake, and who have dealt such heavy blows of sarcasm at the common law rules excluding witnesses from telling all that they might know, or think they know, or say they know, in regard to the transaction under question, have not given sufficient consideration to this other rule which rendered precaution in the competency of witnesses a matter of vital importance.

A parent or teacher who may, and is bound to judge of evidence according to its moral weight, and may refuse to act upon it, however explicit it may be, if the source from which it proceeds is not entitled to command confidence, might well be ridiculed for excluding hearsay evidence, or any kind of information throwing light upon the question under investigation; but a jury are sworn to render their verdict according to the evidence, and if their verdict be not in accordance with the evidence the court will set it aside.

It was from this principle that resulted the tenacity with which the common law clung to the rules excluding witnesses whose situation involved strong and usually controlling interest or bias. The testimony of such witnesses it was not claimed was unworthy to be heard, but it was unworthy absolutely to control the result as a uniform rule of law.

These reforming statutes, for such they undoubtedly are, which admit to the ear of the jury the testimony of interested and suspicious witnesses, ought to be accompanied with some judicious qualifications of this other rule, or some proper restraints upon it.

Our courts have, thus far, gone no further than to say that the testimony of a party in his own favor, when it stands alone, is not enough to entitle him as matter of law to a verdict. It certainly is a very harsh rule to hold that the testimony of one shown to have been a perjurer, or of one directly interested, or of the husband or wife of a party, must, as matter of law, turn the scale and compel the assent of the jury, save only in a case where it is impeached or contradicted by the adverse party.—*N. Y. Daily Register.*

THE case of Foakes v. Beer, 9 App. Cas., 605, is noteworty on more grounds than one.

1. It absolutely determines a principle of law which has for more than two centuries and a half, been the subject of doubt and criticism, namely, that an agreement not under seal, made by a creditor to accept a smaller sum in lieu of an ascertained debt is *nudum pactum*, and therefore void.

2. The argument and the judgment clearly establish that the principle affirmed rests in reality not, as is often supposed, on Cumber v. Wane, 1 Str., 426, but on an unnecessary dictum in Pinnel's Case, 5 Rep., 117*a*. It is, moreover, apparent that

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their lordships would have been glad to escape from the necessity of affirming a doctrine which often leads to inconvenient and unjust results.

3. The fact that the House of Lords did affirm the doctrine laid down in Pinnel's Case is as striking a proof as can be found of the weight wisely given by English courts to authority. A dogma of Coke's resting (it may be) originally upon a misconception of law, has been treated as having in effect nearly the weight of a statutory enactment.—*Law Quarterly Review.*

Supreme Court District of Columbia

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

DISTRICT OF COLUMBIA, USE OF FANNIE A. COOPER,

vs.

JOHN T. VAN HORN.

AT LAW. No. 23.577.

Decided January 12, 1885.
The CHIEF JUSTICE and Justices MAC ARTHUR and JAMES sitting.

The bonds of constables given under and in pursuance of the act of Congress of June 7, 1878, is not affected or controlled by the act of March 3, 1863, requiring the renewal of constables' bonds every two years. The bond given under the act of 1878 runs during the term of the constable, to wit, four years. While under the act of 1863, the bond runs indefinitely until renewed or until the officer was removed.

STATEMENT OF THE CASE.

This was an action against the sureties upon the official bond of one James A. Bean, lately one of the constables of this District. Bean was appointed July 3, 1878; his bond was approved July 5, 1878. Section 1037 of the Revised Statutes District of Columbia, act of March 3, 1863, provides "that each constable shall renew his bond on the thirtieth day of June in every alternate year of his continuance in office."

On the 7th day of August, 1880, Bean wrongfully, as it is alleged, levied on certain household goods of the real plaintiff in this action.

At the trial, the original bond was produced and the signatures admitted, but when the plaintiff's counsel offered to read it in evidence it was objected to on the ground that, under the act of Congress of 1863, the sureties were not liable for the acts of Bean after the 30th day of June, 1880. This objection was sustained, and a verdict for defendants directed by the court. The correctness of this ruling was the only point for review before the General Term.

P. B. STILSON for plaintiff:

The act of 1878 appoints the constables for four years, and this court, in pursuance thereof July 1st, 1878, required them to give a bond, in the penalty of $5,000, for the faithful performance of their duties "during their continuance in office." This is the form and amount of the bond in this case.

The act of Congress under which the old constables acted fixed no limit to their term of service, but required them to renew their bond on the last day of June in each alternate year.

The act of 1878 expressly repeals all laws and parts of laws inconsistent with its provisions. The act of 1863, which appoints constables generally, and requires them to renew their bonds on the 30th day of June in each alternate year, is clearly inconsistent with the act of 1878, which appoints a constable for four years, and requires him to give a bond during his continuance in office, and it is consequently repealed by section 6 of the act of 1878.

This bond is valid as a common law obligation; if irregular in form or not renewed at the proper time, it is no fault of the plaintiff, as the plaintiff could do nothing in the premises. The renewal if required or not done was the result of the laches of the constable and defendants, and they cannot avail themselves of their own laches. 12 Wendell, 306; 2 Id., 281; 5 Id., 193; 4 Id., 414; 14 Johns., 401; 4 Cranch, 90.

HINE & THOMAS for defendants:

Section 1037 of the Revised Statutes of the District of Columbia provides that, "each constable shall renew his bond on the 30th day of June in every alternate year of his continuance in office." The ruling of the court below was in accord-

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ance with this statute and should be sustained.

Mr. Chief Justice CARTTER delivered the opinion of the court.

This action is brought upon the bond of a constable for malfeasance in office in his official duties as a constable. The grievance charged against him post dates the bond by two years and two months, and it is claimed that his sureties are not liable, because the bond is *functus officio*. This is a bond co-eval with the entrance of the constable upon the discharge of his duties as such, covering all of his official undertakings during the entire period of his existence as a constable. Its condition is that he will discharge all of his official duties of constable for the term of his appointment, and pay over all moneys that may come into his hands.

The defence is, that this bond expired in the midst of his term, and only fixes responsibility on the part of his sureties for his acts and omissions, his nonfeasance and malfeasance before the expiration of the two years that mark the middle of his term. This point was sustained by the court below, who determined that no cause of action could arise upon the bond after the expiration of two years, and instructed the jury to return a verdict for the defendant.

This bond, the form of which has been devised by this court, is created and required by the act of Congress of the 7th of June, 1878, which provides as follows: "The Supreme Court of the District of Columbia shall have authority to appoint not exceeding twenty constables, who shall hold office for four years, subject to be removed by said court for cause, upon hearing, and said constables shall be the successors of the constables now holding office in said District. The time of office of all constables now in office in said District shall end on the 30th day of ——, after the approval hereof, and then shall, on or before said day, return all processes which may be held by them, duly executed, and pay over to the proper parties all money in their hands. All said constables may duly execute and return all writs and processes in their hands at the time of the expiration thereof. The Supreme Court of the District of Columbia shall have the power to fix the amount and form of the bonds, and approve the same, to be given by said justices of the peace and constables, and make such further regulations as may be necessary to complete the transfer of the existing offices," etc.

In pursuance of this act, we provided a bond, the condition of which reads as follows:

"Whereas, the above-named constable hath been duly appointed to the office as constable in and for the District of Columbia; now the conditions of the above obligation is such that if the above bounden constable do and shall faithfully perform the duties of the said office, and do and shall pay over, on demand, to the person entitled or authorized to receive the same, all moneys that may come into his hands as a constable, during his continuance in office, then the above obligation to be void, otherwise it is to be and remain in full force and virtue."

That is the condition of the bond that this court prescribed to be executed by constables and their sureties for the term of four years—the term prescribed by the law for the existence of the constable. Constables in this jurisdiction had an indefinite existence before this law was passed. The memory of man did not run back to the beginning of their appointment, and it was for the purpose of rendering a definite and responsible constabulary in the District that this statute was enacted, and this bond prescribed by by the court. Its terms are that he shall be responsible for all his official acts during the period of his official existence, viz., the four years for which he is appointed.

Now, it is said that this bond expires in all its energy in the middle of his term, and that no breach can transpire after the expiration of the first two years of the four. And this is said to be so, because as far back as in 1863 Congress passed a law providing that each constable should renew his bond in every alternate year of his continuance in office. It was a provision of the law for the increase of responsibility on the part of constables, a guarantee to those whose business they were transacting that they should furnish se-

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curity for fidelity in the performance of their duty, and it was enacted when the terms of the constabulary were indefinite. Suppose it be said that this statute applies to the constables created by the act of 1878, what then? We have a bond executed in 1878 by a constable, with sureties, to answer for the discharge of his official duties. Now, if the act of 1863 applies, one of his official duties is to furnish a renewal of his sureties at the expiration of two years. Who is responsible for his failure? What good defence do the sureties on this bond have, if the constable is derelict in one of his most important duties?

The act of March 3, 1863, is merely declaratory of the duty of a constable, in the interest of higher and better security, and neither he nor his sureties can say that his default or dereliction is a discharge for the surety.

But our judgment is not founded upon that view of the subject. Our opinion is that the act of 1863 is a directory statute merely. The bonds which were given at the time this statute was enacted, requiring their renewal every two years, we reco-extensive with the office, covering its entire length and all its duties, and it remained an obligation concurrently with the continuance of the office. And the fact of the renewal, or non-renewal, did not enter into their validity. But when the term is restricted by law to four years, and a bond is given covering the four years, it cannot be said that it is of no validity after the expiration of two years. The statute of 1863 has no application to it, for this bond is for a definite period, while in the other case the bonds run indefinitely until renewed or until the officer was removed.

The judgment is reversed and a new trial granted.

THE Supreme Court of Nebraska has recently decided that a telephone company cannot refuse to furnish an instrument to a person who offers to comply with the regulations demanded of subscribers. The decision places telephone companies of the same footing respecting the rights of the public as telegraph companies.

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Supreme Court of Pennsylvania.

ALLEGHENY VALLEY RAILROAD COMPANY *vs.* OFFORD ET AL.

In crossing a railway track a higher degree of care is exacted where a train is approaching than where it is stationary and without any engine attached.

Under the facts of this case it was not error to refuse to take the case from the jury, because of alleged contributory negligence.

Error to the Court of Common Pleas No. 1 of Allegheny county.

The action was brought to recover damages for the death of Elijah Offord, which occurred on the Allegheny Valley railroad at Thirty-fifth street crossing, in Pittsburgh, on December 10, 1881. On that day a shifting engine of defendant was collecting cars from the mill yards along the line of the railroad, to make up a train. A number had been collected and backed down, so as to obstruct Thirty fifth street. The engine left them in this position and went to another yard for others. While so standing, some cartmen of the neighborhood separated the cars at the crossing so as to leave an opening of three or four feet in width.

Offord, having occasion to cross the track, attempted to pass through this opening, through which a number of persons had crossed, probably in the sight of Offord, as he approached. When he reached the railroad no engine was attached to these cars, nor on that track. It was in evidence that Offord "kind of stopped, and kind of looked up and down the track," before attempting to cross, and that "he just took a step and was caught." At this moment, the shifting engine, with other cars, crossed to the track on which the cars, previously collected, were standing, closed the opening at Thirty-fifth street and caused the death of decedent.

It also appeared that it was customary for the railroad company toleave an opening between standing cars at Thirty-fifth street, and further, that Offord had been for years familiar with the crossing, and knew that trains were made up at that point.

The defence showed that Offord, before entering the opening, had been by more than one person warned that the engine was about to back down on this track. In rebuttal, several witnesses were called, who testified that though near at hand, they did not hear the warning said to have been given the deceased.

The error assigned was the refusal to give binding instructions to the jury.

PER CURIAM. Filed November 10, 1884.

The only complaint here is, that the court

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did not take this case from the jury. In this there was no error. It was submitted in a charge so unexceptionable that no error is assigned to any part thereof. In crossing a railway track a higher degree of care is necessary to avoid being injured by an approaching train than by a stationary train without engine attached thereto.

Judgment affirmed.

—*Pittsburgh Legal Journal.*

Usage in Draft Acceptance.

Supreme Court.—General Term.

JAMES ESPY ET AL.

vs.

THE BANK OF AMERICUS.

BRADY, J.—The facts, most favorably stated for the plaintiffs, are as follows: On October 18, 1877, the appellants, bankers in Cincinnati, discounted a note for $1,275, made by A. Hirsch, of Americus, Georgia, and endorsed by H. Hirsch & Co., of Cincinnati.

About December 1, 1877, the appellants sent the note to the Bank of Americus for collecttion. The note matured December 20, 1877, and was duly presented for payment to A. Hirsch, the maker. He declared his inability to meet it, and asked the bank for a loan to enable him to pay it. This was refused. He then offered to give a draft on H. Hirsch & Co., the payees and endorsers, in exchange for the note. This proposition was also declined. Later, on the same day, he appeared with a telegram from H. Hirsch & Co., authorizing him to draw on them for the face of the note. The bank then accepted his draft, told its notary not to proceed with the protest which he had begun, and surrendered the note. The draft was enclosed to Espy & Co. in a letter dated December 20, with no particulars of the arrangement.

The draft reached Cincinnati, December 24. Espy & Co. presented it immediately for acceptance; acceptance was refused; it was duly protested (fol. 62), and on December 26, Espy & Co. re-enclosed the draft to the Bank of Americus, requesting it to remit. Espy & Co. wrote again, December 31, to the bank, stating that they held it liable for the amount of the note, and subsequenty made another demand September 5, 1878.

A Hirsch, of Americus, made an assignment December 21, 1877. H. Hirsch & Co., of Cincinnati, suspended payment January 2, 1878. Espy & Co. never received any proceeds of the note.

The answer on the part of the defendant is that the plaintiffs had for two years prior to December 20, 1877, frequently sent to the defendant notes and drafts similar to the note in suit. Some were drawn by H. Hirsch & Co., of Cincinnati, Ohio, on A. Hirsch, of Americus, and vice versa. The aggregate amount of these notes and drafts was upwards of forty thousand dollars. When they were presented to A. Hirsch he almost invariably drew on H. Hirsch & Co. for the amounts, and the drafts thus drawn were sent by the defendants to the plaintiffs, and were in no instance returned. When the note in suit matured, the same procedure took place, and the plaintiffs acknowledged the receipt of the draft drawn to pay the note without objection. It was not paid, however, and then the plaintiffs fell back upon the liability supposed to have been incurred by the defendant, in accepting the draft in lieu of money, and its failure to have the note protested. It is wholly immaterial what would have been the result if the defendant had not been justified by the dealings between it and the plaintiffs, in reference to the obligations of A. Hirsch & Co. and H. Hirsch & Co., as they matured, in accepting a draft in payment of them, for the reason that they were justified in so doing.

The procedure adopted by the defendant was in strict accordance, as we have seen, with the understanding between the parties established by a long course of dealing, and from which the defendant was not asked to depart or notified that it should no longer continue. It would be unjust to the defendant to hold it responsible for having pursued the same mode which had been adopted, acquiesced in and sanctioned by the plaintiffs as to similar obligations. For this reason the judgment appealed from should not be disturbed.

None of the exceptions taken can be pronounced effective. The plaintiffs objected to evidence admitted, it is true, but that evidence related properly to the defenses interposed. The long recognized usage in relation to the acceptance of drafts in lieu of money under the circumstances detailed was a complete answer to the claim made upon the defendant without regard to any other element. The judgment should be affirmed with costs.

The Law of Commission.

Hornby v. Eberle, in which Mr. Justice Lopes recently delivered judgment, was a case of a kind with which the courts were more familiar some ten years ago than they are at the present time, or have been until quite recently. In fact, it was a claim for commission agreed to be paid by the defendant in the event of the plaintiff's procuring him a loan of a certain amount. Now, the law upon

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this subject is remarkably plain, and we should have thought it was also well-known, but it is still a good thing that Hornby v. Eberle should have been brought into court, because it has afforded Mr. Justice Lopes an opportunity of stating the law in terms more clear and more defined than those in which it formerly was expressed. The claim in the case now in question was for £1,000 commission due for the procuring of a loan of £61,000 upon security of the Grand Hotel at Liverpool. The agent found a gentleman who professed himself to be able and willing to advance the required amount of money, but the money was not advanced, because, as was alleged, the value of the security had been exaggerated by the proposed borrower. The plaintiff then brought his action for commission, but in the course of the hearing the fact came out that the proposed lender had, in fact, never been in a position to make the advance without rehypothecating the security. The learned judge accordingly gave judgment for the defendant. The cases upon which the plaintiff placed most reliance were Green v. Lucas (33 L. T. Rep., N. S., 584), and Fisher v. Drewett (39 L. T. Rep., N. S., 253), and these are beyond all question the leading authorities upon the subject. The first-named case is of the utmost importance, for it was one in which the prospective borrower did in fact give an exaggerated value to the security which he was able to offer, and the words of Lord Chancellor Cairns are noteworthy: "Either it was a sufficient exaggeration to justify the lenders in refusing, or not, and in the latter case the defendant might have proceeded against the lender." Still more explicit is the language used by Lord Justice Bramwell, explaining the meaning of the word "procure" in such contracts. "To procure," he said, "is to procure the lender and not the money." Of this dictum it is to be observed that "lender" must be taken to mean a man who has the money to lend, and not the mere will to lend what he has not got. That this is the meaning of the words is clearly proved by words of Lord Justice Thesiger, and again of Lord Justice Bramwell, in Fisher v. Drewett, which was decided in 1876, two years later than Green v. Lucas. The latter judge said: "I think the whole thing (the contract was in the customary form) means this: If you get me a good contract for the loan of £2,000, I agree to pay you commission on that sum." But Lord Justice Thesiger reached the centre of the facts when he said: "There was a point of the negotiations at which the Temperance Building Society would have lent the money." The same principle is traceable in the other cases which are mostly concerned with contracts for the payment of commission to house agents for obtaining purchasers; and even in Prickett v. Badger (26 L. J., 33, C. P.), in which the plaintiff was employed to find a purchaser for a house, and found one, but the sale was never completed, through the fault of the defendant. In this case the plaintiff recovered a *quantum meruit*, but the principle is the same. He had done all he could do, and was entitled to be remunerated for his trouble. Again, in Inchball v. Western Neilgherry Company (17 C. B. N. S., 733), it was held—in this case, too, the contract was to procure a purchaser—that the plaintiff was entitled to all that he would have obtained but for the wilful act of the defendant. The other leading cases upon the subject are Tribe v. Taylor (1 C. P. Div., 505), and Mansell v. Clements (9 C. P., 139), of which case it may be remarked that it was one of the few upon which the lamented Mr. Justice Honyman sat during his short career on the bench. It need hardly be argued that the cases in which an agent contracts to find a purchaser, and an agent agrees to find a lender, are to be judged on precisely similar principles. In the first case the agent is bound to establish the relation of seller and purchaser; in the latter, to establish the relation of borrower and lender, before he is entitled to claim his commission. In either case, if, when he has performed his part of the contract, the sale is not completed, or the loan is not effected through the default of the vendor or the borrower, he is entitled to claim his commission. But the judgment of Mr. Justice Lopes, in the case of Hornby v. Eberle, has a special value as showing that a lender must be something more than a man of straw. This consideration was suggested, no doubt, in Green v. Lucas, by Lord Justice Thesiger, but to Mr. Justice Lopes belongs the credit of having said in plain terms that, although an agreement to procure a loan is nothing more than an agreement to procure a lender, the lender, and therefore by implication in similar cases, a purchaser also, must be a man of substance, not only willing, but also ready and able—the last word is new to these cases—to advance the money if the security is sufficient; and it is to be observed that the word "able" must be construed strictly. It will be observed that, in this survey of the law upon a point of great interest to business men, nothing has been said of the cases of Clack v. Wood (47 L. T. Rep., N. S., 144; 9 Q. B. Div., 276), and of Chapman v. Turner, which has not been reported. In the former case the claim for commission was disallowed because it was a part of the contract

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to obtain the sale of land to the defendant that the vendor's title should be approved by the defendant's solicitor, to whom the title was never submitted. In the latter case it was found that the plaintiff was cognizant of facts affecting the value of the security offered by the defendant, and that the discovery of these facts prevented the loan from being effected. These cases, therefore, do not affect the general law upon the subject. Nor has any special notice been given to the suggestion that, if agents, after putting up a man of straw, were entitled to claim commission, a wide opening would be offered for fraud, for it is submitted that the criminal law against conspiracy to defraud would shortly close such an opening—*Law Times.*

The Technicalities of Real Estate—Contingent Remainders.

The old English courts of common law maintained with remarkable consistency the conception they had developed during the middle ages of the ownership of land forever as a present existing right. From this conception would naturally arise the doctrine that the several rights or estates into which a fee might be carved, and which might be distributed among different persons, must each at all times belong to some one, or, in other words, that there should at all times be in existence persons whose several estates would together amount to a fee simple absolute. This corollary seems a logical consequence; but this they were not able to maintain. The abstraction, estate, gained so strong a hold and so clear a place in the law, that although it was originally only a relation of a man to property, it came to be conceded that there could be an estate without an owner for the time; that is, a relation of property to a person not yet in existence or not yet ascertainable. The very strong disposition of feudal lords to retain to their own families a reversionary interest in the estates they granted to their adherents and retainers, cooperated with the readiness of the latter to accede to terms which promised in turn to preserve the lands granted in *their* families according to the expected line of succession, resulted in several devices, by which to create future estates, not only for children in existence, but for others not in existence, and who might, perhaps, never come into existence. The skill of conveyancers found the means to do this, and the law, which always adapts itself in a degree to the justifiable usages of society, sanctioned, within certain narrow limits, the creation of such estates in anticipation of unknown and unassured owners.

The two classes of estates without present owners or without present owners having an absolute power of disposal which thus gained recognition are contingent remainders and executory devises. They are still in substance sanctioned to some extent; and when they occur in American conveyancing cause much perplexity. A still greater degree of perplexity is caused when, owing to the ambiguity of a deed or will or the imperfect knowledge of a practitioner, a doubt arises as to whether a remainder is contingent or vested.

No question is more frequent under wills than this one—whether a remainder or the analogous future interest of a *cestui que trust* is contingent or vested. It is a familiar rule that the courts lean toward holding an estate vested rather than contingent. But the common idea is that if there is a contingency as to who will enjoy the estate when the time arrives for enjoyment, the estate is contingent. There are many cases in the books holding according to that idea. But if we revert to the fundamental conception of a remainder as an estate, it will easily be remembered that the contingency intended is one that affects the remainder. The term does not mean a sure remainder with a contingent remainderman; but a remainder or estate in remainder, which is in itself contingent. This contingency may result from the uncercainty whether there will ever be a remainderman whose power to take can give the remainder effect, or it may result from the fact that the creation of the remainder itself is conditioned on some unascertained event, irrespective of whether the remainderman is in existence and ready to take or not. In either case it is a contingency affecting the anticipation of the remainder itself which is intended. The identity of the remainderman may also be contingent, or may be involved in the same contingency, or may be not contingent at all. Thus, if a man devise property to his daughter for life, remainder to the daughter's child or children, the remainder is not contingent if the daughter has a child at testator's death. It is true that it is not certain whether the child then living will survive to enjoy the remainder at the daughter's death; it may die and some other child be born who will take the remainder in its stead, but this contingency is held to relate to the remainderman, not to the remainder. But if the daughter has never had a child at testator's death, then the remainder is contingent, for if she never has one, the remainder will never come into existence. If a child is born to her, then the remainder is no longer contin-

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gent, although it be still uncertain whether that child will live to enjoy the gift. This assumes that the circumstances are such that the heirs or next of kin of the child will take if it do not survive. Hence the common law settled this test for determining whether a remainder is contingent or not; imagine that at the time when the question arises the precedent estate were instantly to terminate, and then ask, is there any person in being entitled immediately to claim possession and enjoyment of the remainder? if so the remainder is not contingent. Uncertainty as to whether that person will ultimately be entitled to claim it, is not necessarily a contingency affecting the remainder.

This analysis must not be understood as exhaustive, nor as presenting a clue to all the bearing of contingent remainders; but it gives a clear and sure test for solving the most common question arising on the subject in the present state of our law; and manifests a distinction fundamental to the rest of the subject.—*N. Y. Daily Register.*

Philosophy of Punishment.

Chief Justice Elliott, of Indiana, in his paper on "The Philosophy of Punishment for Crime," published in the Indiana *Law Magazine* of October 28, November 8, observes:

"Law-givers, philosophers and theologians have for ages assumed that men are responsible beings, and the combined experience of many centuries is far weightier than the speculations of visionary theorists. But as we have seen, the assumption is supported by the closest analogies and strongest reasons. Its denial involves the affirmation that organized society is impossible, and this is nihilism in its worst form. There are, however, degrees of responsibility; some persons are less responsible than others. On this point we nearly always err, for we almost invariably place the heavier responsibility on the wrong person. If a lad born of good parents, and who moves among the refined and educated, commits a theft, we feel that his punishment should be light, but if a child born of wicked parents, and who belongs to the ranks of the degraded, commits a like offence, we feel that he should be severely punished. This judgment is radically wrong. In strict justice, it is the well-born lad who deserves the severest punishment, and not the ill-born, whose inherited tendencies and whose surroundings have exerted such a fearful influence upon his mental and moral nature. Environment is, I know, a term often made to stand for much and mean little, but it possesses an important meaning, and conveys a material thought when used as descriptive of the influences under which children are born and reared. The child reared among thieves and harlots and brutal men is surrounded by fateful influences that would be very likely to drive into crime a child born of the purest and best parents. The malignant influences that surround the young who dwell with vicious women and brutish men are so powerful that it is a marvel that anyone ever escapes from their fell power. Better a thousandfold than all the criminal codes that man ever did or ever can devise, would be a plan that should take the young from these dark places and evil associations, and place them in a brighter and purer region. More potent than the law of environment is the dreadful and unbending one of heredity. . . . The laws of heredity and environment, powerful as they are, do no more than implant in the individual tendencies and propensities; they are not laws of action; they do not compel a person to do wrong; they simply incline him to a life of evil. They are not supreme laws; above them are the conscience, the judgment, and the will. No sane man was ever driven into crime by the laws of heredity and environment. As Dr. Elam says: 'And herein consists man's responsibility, and the very possibility of virtue, that whilst the brute acts strictly according to his organization, man equally urged by his, may act according to a higher law, *i. e.*, a moral law. Every sane man is responsible for his voluntary acts, whatever may be the moving impulse. Sin and crime are always sin and crime, whatever the constitutional tendency.' . . . Society too often disregards these potent laws of heredity and environment, and thrusts young offenders into confinement with men hardened in crime; men whose glory is their wickedness; and by the evil associations thrown around these novices in evil-doing have their inborn propensities festered into settled wickedness, and reformation becomes impossible. The wrong is a cruel one, in most instances an awful crime. It is a fierce enough battle for the young offender to fight the inherited impulses, strengthened as they most often are by his environments, without having his enemies re-enforced by the teachings and influences of the inmates of the prison disgraced beyond the hope of reclamation; and society does a cruel thing in supplying the re-enforcements that conquer the already hard pressed and far-spent combatant. Not only do the evil associations strengthen the wicked propensities, but the disgrace destroys all hope. There are many prison doors over which might be written the memorable words of Dante: 'Abandon

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hope all ye who enter here.' It may cost money to change our system of dealing with the young in crime, but shall an enlightened people weigh money against souls? It may be a slow and toilsome work, the repose of society may somewhat suffer, but in the end the gain will be infinitely greater than any loss, and will many times repay the work and time bestowed. There may be disheartening failures, but success will be attained at last, and in such fair measure that no one will doubt that the end crowns all. To take measures to reform those in whom there is hope of reformation, is to lay the axe to the root. To take the children of the bad from evil influences, is to check the polluted stream that breeds criminals as foul waters breed slimy things. That society has a right to do this there can be no doubt; that it is the duty of society to do it is not uncertain."

Hypothetical Questions.

Where a witness has personal knowledge of the facts upon which his opinion is founded, he may give an opinion as an expert, predicated on such facts. 26 N. Y., 426; 23 Id., 42; 3 Hun, 523. But when he possesses no such knowledge, and has no knowledge of the facts except such as he has derived from the testimony of other witnesses, and those facts are controverted, he cannot properly be allowed to give a direct opinion. 83 N. Y., 358–365; 64 Id., 589; 22 Hun, 297; 53 N. Y., 603; 62 Id., 316; 9 Daly, 365. In such a case it is not the province of the witness to reconcile and draw inferences from the evidence of other witnesses, and to take in such facts as he thinks their evidence has established or as he can recollect and carry in his mind, and thus form an opinion. If the party desires the opinion of such witness, he must put to him a hypothetical question, assuming some or all of the facts claimed by the party to have been established by the evidence, and on the facts so assumed obtain his opinion. 64 N. Y., 589; 11 Jones & Sp., 288; 22 Hun, 297; 83 N. Y., 358; 10 Hun, 201.

In framing hypothetical questions it is the privilege of counsel to assume within the limits of the evidence any state of facts which it is claimed the evidence justifies (49 N. Y., 42; 10 Hun, 201), and an error in the assumption does not make the interrogatory objectionable if it is within the possible or probable range of the evidence. Harnell v. Garvey, 66 N. Y., 641; Stearns v. Field, 90 N. Y., 640.

Each side in an issue of fact has its theory of what is the state of facts, and assumes that it can prove it to the satisfaction of the jury, and so assuming, shapes hypothetical questions to experts accordingly. Cowley v. People, 83 N. Y., 464; Seymour v. Fellows, 77 Id., 178; People v. Lake, 12 Id., 358.

Counsel are not confined to facts admitted or absolutely proved, but facts may be assumed which there is any evidence on either side tending to establish, and which are pertinent to the theories which they are attempting to uphold. Dilleber v. Home Life Insurance Co., 87 N. Y., 79. The facts assumed need not include all the facts in evidence; and the fact that part only of such facts are embraced in the hypothetical question does not render it improper. Stearns v. Field, 90 N. Y., 640; Mercer v. Vose, 67 Id., 56.

Where the facts suggest several hypothesis, the expert may be asked what would be his opinion on one or another hypothesis, without first proving it to be the true one. Erickson v. Smith, 2 Abb. Ct. App., 64.

In putting hypothetical questions upon the cross-examination of an expert, counsel may assume any facts pertinent to the inquiry, whether testified to by witnesses or not, with the view of testing the skill and accuracy of the experts, subject to the control of the trial court. Dilleber v. Home Life Ins. Co., 87 N. Y., 79.

The grounds of the opinion expressed by an expert may be inquired into on his direct examination, or the examining party mayt ake the general statement of the witness, leaving it to the adverse party to make the inquiry on cross-examination, if he shall so elect. Curtis v. Gano, 26 N. Y., 426.

The rule laid down in the above is the well settled rule in this country, with the exception possibly of the State of Illinois, which in most of the decisions of its Supreme Court is an exception to all courts. For instance, take the recent case of Haish v. Payson, 107 Ill., 370, which was decided by Judge Sheldon, involving the practice in a case where a hypothetical question was propounded. The decision on the merits may possibly be correct, and with that we shall not deal, but the learned judge who delivered that opinion, and who merely re-echoed Judge McAllister's opinion in deciding the same case in the Appellate Court, seems to forget that he ever was a lawyer or *nisi prius* judge, and he objects first to the inordinate length of the hypothetical question.

2d. That "it is not permissible to assume that which is not within the range of legitimate evidence," whatever that is; and

3d. That the pretended hypothetical question was read over several times to witnesses in the presence of the jury, and by so doing

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"was calculated to possess them most fully with the plaintiff's side of the case, and not leave their *minds open* to an unbiased consideration of the whole of the facts of the case."

This opinion may be sound so far as it relates to the merits, but as a practical question we would like to know if the Supreme Court of this State or any other State has ever determined the length of a hypothetical question, and how many times it should be read over to witnesses? Indeed, how is a hypothetical question to be propounded to witnesses? Is the trial court obliged to call a convention of witnesses, have counsel take them into a side room, and then and there read it over to them, or whisper it in their ears? Which? It is perfectly well known to every practicing lawyer that expert witnesses cannot be got together at the same time, and that it is wholly impracticable to do so, and as to the length of hypothetical questions, this question that so shocked Judge Sheldon is no touch to many that are found reported in the books, some of which are three times as long.—*Legal Adviser.*

NOTES OF RECENT DECISIONS.

Landlord and Tenant: Fiduciary Position of Tenant.—A tenant stands in a position of trust and confidence to his landlord, and if he aids in procuring the sheriff's sale of his landlord's property, by preventing the landlord having any notice, such sale will not enure to the tenant's advantage. [Matthew's Appeal; S. C. Penn., Jan. 7, 1885.

Contracts: Between Husband and Wife in Bar of Dower.—Though the laws of a State confer upon married women the freedom of contract possessed by *femes sole*, an agreement between husband and wife upon valuable consideration, by which each agrees to to make no claim upon the estate of the other in case of death, is not binding and no bar to a petition by a wife for her statutory share in her late husband's estate. [Whitney v. Closson; S. J. C. Mass. 19 C. L. J., 449.]

Will: Life Estate; Power of Sale.—A testator gave a life estate in certain lands to his wife, with remainder in fee to his executors, with directions that after her death they should convert the property into cash and divide the proceeds among his children when the youngest should have attained twenty-five years of age. *Held*, that the executors could, with the widow's consent, sell the lands in question in her lifetime. [Snell's Ex'rs v. Snell; 38 N. J. Eq. 30 Alb. L. J., 427.]

Compromise: Doubtful Claim; Alienation of Wife's Affections.—A man who has been guilty of alienating a wife's affection, and upon discovery gives a note to compromise a threatened suit by the husband, is bound by it, as he had committed an actionable wrong, though she had not left the house, it being at least a compromise of a doubtful claim. [Rinehart v. Bills; S. C. Mo., Nov. 17, 1884.]

Statute of Frauds: Agreement to Purchase Land; Part Performance; Pleading; General Denial.—1. A contract by an agent to procure certain land from the owner by purchase, for his principal, is within the statute of frauds, and, if the agent take the title in his own name, and refuse to convey to his principal, the latter has no remedy. 2. The agent, having not even received the purchase money, and the principal having never had possession, nor made any improvements, the principal can receive no relief. 3. The general denial is sufficient to enable a defendant to take advantage of the statute. [Allen v. Richard; S. C. Mo., Dec. 1, 1884.]

Nuisance: Injunction.—To entitle a person to relief in his own right by injunction to abate a public nuisance, he must show that he has suffered damage distinct from that of the general public. The injury must be actual, substantial, not technical, nor inconsequential; thus the parties owning adjoining lots in a village, the court refused to enjoin the defendant from building a wall in front of her own lot, although partly constructed within the surveyed limits of the highway, and obstructed the orator's carriage road from his house to the main street, when a few rods distant he had another way equally available, and in daily use; and although the obstructed way added somewhat to the beauty of the premises, the court holding the injury to be a mere fancy. [Stanford v. Lyon; 37 N. J. Eq., 94; High Inj., §762, note 5; 8 Sim. 194; Bigelow v. Hartford Bridge Co., 14 Conn., 565. Sargent v. George. Opinion by Taft, J.; 56 Vt.]

Common Carrier: Delivery of Goods; Reasonable Time; Conversion.—When a carrier fails to deliver goods within a reasonable time, such failure *per se* will not amount to a conversion, but is only a breach of contract, and the owner cannot refuse to receive them. [T. & P. Ry. Co. v. Martin; Tex. App., Oct. 15, 1884.]

Criminal Law: Indictment; Description of Offense.—An indictment is not good which merely changes a conclusion of law without giving a specific description of the offense. [State v. Bexler; Md., April term, 1884.]

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Equitable Assets: Judgment Creditor.—The equity of redemption of a judgment debtor may be subjected to the payment of the judgment by a bill in equity. The suing out of an execution must be alleged in the bill. Equitable assets can be reached through a court of equity by a judgment creditor who shows that he has caused an execution to be issued, as the legal remedies to satisfy the judgment are aided in equity, and other creditors are not entitled to be made parties to the bill to participate ratably in the distribution of the assets. [Freedmans' Savings and Trust Co, v. Earle; U. S. S. C., March 10, 1884.]

Attorney and Client: Agreement for Fees and Expenses; Insolvency.—If an attorney has rendered services and expended money in instituting and conducting a suit, and the plaintiff orally agrees that he may retain so much of the avails thereof as will pay him therefor and for previous services in other matters, and he thereafter conducts the suit to a favorable conclusion, he has, as against the plaintiff, an equitable lien upon the avails, both for his services and expenses in the suit, and for the previous services covered by the agreement. And if, after such agreement, the plaintiff goes into insolvency, the trustee in insolvency stands in his place and takes the estate burdened by the equitable incumbrance. [Cook v. Thresher, 51 Conn.]

Debtor and Creditor: Subsequent Attaching Creditors; Rights of Intervention.—A subsequent attaching creditor cannot intervene in the suit of a previous attaching creditor against the same defendant and avail himself of mere irregularities in the proceedings. But he can do so when an attachment is based on a fraudulent demand, or one which, in fact, had no existence. As a general rule, an intervenor must give notice to all parties to the cause, but where the defendant has no interest in the proceedings, no relief is asked against him, and no judgment which could be rendered could affect him, it is not necessary to make him a party. [Joseph Peters' Furniture Co. v. Dickey; Tex., Oct. 28, 1884.]

Negotiable Instrument: Promissory Note; Indorsement; "Protest Waived."—The words "protest waived" include waiver of demand and notice. [Annville Nt. Bk. v. Kettering, Penn., May 19, 1884.]

Libel: Newspaper; Responsibility of Publisher; Punitive Damages.—A newspaper proprietor who allows an employee to report in the columns of his paper whatever the employee sees fit, is liable in damages for whatever injuries a citizen may sustain. Evidence is admissible, for the purpose of swelling the damages, of the careless, reckless and wanton conduct of the employee. [Bruce v. Reed; S. C. Penn. Phil'a Leg. Int., Jan. 2, 1884.]

Constitutional Law: Regulation of Commerce.—A Sunday law which excepts from its operation those engaged in the transportation of passengers and mail is not void as to its exceptions even its operation on a railroad company engaged in inter-State business. It is not a regulation of inter-State commerce. State v. R. R. Co.; S. C. App., W. Va., May 3, 1884.]

Partnership: Sale of Assets to pay Debt; Preference.—A partner has authority to sell the whole or any part of the firm assets to pay debts of the firm, there being no fraud in the transaction. Such a sale to a creditor in order to pay his debt preferentially is valid if done openly and in good faith, and only such property taken as is reasonably necessary to pay the debt. [Schneider v. Sansum; S. C. Tex.]

Will: Life Estate; Remainder; Power to Sell.—A disposition by will to a widow of an estate "to sell and dispose of as she may see fit for her own comfort and convenience," with power to convey in fee simple "if her necessities require it," with remainder over to the children, gives the widow a life estate, only, with power to sell for her necessary comfort. [John v. Bradbury; S. C. Ind.]

The Courts.

SUPREME COURT OF THE DISTRICT OF COLUMBIA GENERAL TERM.

Feb. 9 & 10, 1885.

Brownining v. District of Columbia. On hearing.

Feb. 11, 1885.

Same Argument concluded and cause submitted.

In re W. M Bryant. Habeas corpus. Argued and submitted.

Feb. 12 & 13, 1885.

Ketchman v. Georgetown College et al. On hearing.

IN EQUITY.—New Suits.

Feb. 5, 1885.

9322. John Lyon v. Amanda R. Copeland. Com sol, Elliot and Newman. Defts sol, W. P Bell.

9323. The National Bank of the Republic v. William C. Adams et al. Judgment creditor's Bill. Com sol, R. K. Elliot.

Feb. 6, 1885.

9324. Elizabeth Miles v. John S. Swormstedt et al. Injunction Com sol, J McD Carrington.

9325. Sarah W. Gardner v Grenville G. Gardner. For divorce. Com sol, T. H. N. McPherson.

Feb. 9, 1885.

9326. James Warner et al. v. Alexander Corbin et al. To enjoin, &c. Com sols, Roys and Moss, Defts sol, H. T. Wiswall.

Feb 10, 1885.

9327. Mary S Naylor v. Henry Naylor et al. Partition by sale Com sol, R K Elliot.

9328. Henry Ware v. Rachel Ware. For divorce. Com sol, W. P. Williamson.

Feb. 11, 1885.

9329. Charlotte M. Barker v. John R. Brooks et al. To cancel deed. Com sols, Appleby & Edmonston.

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9330. Chas McIntire, jr., et al., v Edwin A. McIntire, administrator et al. Injunction and receiver. Com sols, Hanna & Johnston.

Feb. 12, 1885

9331. Gertrude F. Smith v. Elizabeth Smith et al. Partition by sale. Com sols, Birney & Birney and R. T. Greener.

9332. Pauline M Powell v. Wm. Powell. For divorce. Com sol, W. A. Cook.

CIRCUIT COURT.—New Suits at Law.

Feb. 6, 1885.

25951. Joseph Nimmo, jr., v. Reuben H. Andrews. Note, $280. Pliffs atty, R. R. Perry.

Feb. 7, 1885.

25952. Francis J. Heiberger v. Daniel A. Driscoll. Acct., $1563 81. Pliffs atty. F. P. R. Sands.

25953 R. Davis Carey et al. v. A. M. Tubman. Acct., $72. Pliffs atty, M. Dean.

25954. Bessie Knight et al. v Edgar W. Dennison. Note, $475 59. Pliffs attys, Ross and Dean.

Feb. 9, 1885

25955. Willett & Libbey v. Grier & Carr. Acct., $356 29. Pliffs attys. Appleby & Edmonston

25956. James Sargent et al. v. John O Guethler. Bill of Ex., $192.68. Pliffs atty, D. Dyrenferth.

Feb. 10, 1885

25957. Robert H. Gray v. E. M. Hewlett. Replevin. Pliffs atty, A. K Browne.

25958. M. W. Galt, Bro. & Co. v. Edmund C. Blunt. Judg't of Justice O'Neal, $45. Pliffs atty, L, C. Williamson.

25959 The United States v. Nathan C. Draper et al. Bond, $2000. Pliffs atty, A. S. Worthington.

25960 Andrews & Wade v. Leon Schell. Acct, $550 07 Pliffs atty, C. C. Cole.

25961. Same v. Mary E. Plummer et al. Note, $1,187. Pliffs atty, same.

25962. George W. Beall, jr., v. R. P. Jackson, administrator. Acct., $1160.44. Pliffs atty, J. J. Waters.

25963 Edward A. Boyd & Son v. Thomas A. Brown. Acct., $554.52. Pliffs atty, M. Dean.

25964. John A. Goldsborough v Bateman & Co, $1250. Pliffs attys, Darlington and Elliott.

Feb. 11, 1885.

25965. The Citizen's National Bank, of Washington City, v. Reben H. Andrews. Note, $200. Pliffs attys. Worthington & Heald.

25966. Walsh, Hall & Co. v. Richard N. Batchelder et al. $30000 Pliffs attys, Davidge & Davis.

25967. Henry F. Reh v U. B. Mutual Aid Society, of Pa. $2,000. Pliffs atty. R. Christy.

25968. R. M. Jones & Co. v Rodler & Krogmann. Notes and Acct., $3120.12. Pliffs atty, J. J. Darlington.

25969. Higgins, Cobb & Co. v. Wolf Rice. Note, $212, 27. Pliffs atty, N. H. Miller.

PROBATE COURT.—Justice Hagner.

Feb 14, 1885.

Estate of Mary E. Maroney. Final notice issued.

Will of George Gregory. Filed for probate.

Estate of Luther Martin. Decree confirming sale of partnership interest in the firm of Martin & Butler, and authority to administrator to issue money in bonds.

Estate of John Rutledge. Proof of publication filed,

Estate of Elizabeth Collins. Order authorizing transfer of stocks in Baltimore.

Estate of John Collins. Order authorizing transfer of stocks in Baltimore.

Estate of Bridget Fitzmorris Final notice issued.

Estate of George White. Inventory of personalty returned.

Estat of L. M Powell. Caveat and will filed by Hamilton Ormsby and E. B. Ormsby, and issue directed to be sent to Circuit Court.

Estate of Catharine Robinson. Petition and order referring cause to take testimony and to report on identity of deceased under her maiden and married names.

Legal Notices.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration, on the personal estate of Margaret Waters, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of January, 1885.

7-3 COLLINS CRUSOR,

GORDON & GORDON, Solicitors. Administrator.

Legal Notices.

THIS IS TO GIVE NOTICE

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of administration on the personal estate of Samuel Cook, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 13th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of February, 1885

THOMAS D. BOND, Adm'r.

JUDSON CULL, Solicitor. 7-3 126 Pa. Ave, N. W.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, February 13th, 1885.

In the case of John W Ross, administrator of the estate of Mary Maroney, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 6th day of March, A. D. 1885, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 7-3 H J RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

MARGARET E. STODDART v. CATHARINE E BOOTH ET AL. } No 8833. Eq Doc. 28.

George E. Hamilton, trustee appointed by a decree of this Court in the above entitled cause to sell the real estate in these proceedings mentioned, to wit: the north twenty-five (25) feet and six and one half (6½) inches, of lot 22, in square No. 37 by the depth of said lot, having reported to the Court that after complying with the requirements of said decree, he offered for sale at public auction the aforesaid property on the 19th day of January, A. D. 1885 and that John Firm, of the City of Washington, in the District of Columbia, became the purchaser thereof, at twenty one cents per square foot, it is by the Court on this 8d day of February, A. D. 1885, ordered that said sale be, and the same is hereby ratified and confirmed unless cause to the contrary be shown on or before the 5th day of March, 1885.

Provided, a copy of this order be published in the Washington Law Reporter once a week for three weeks before the said 5th day of March, 1885

By the Court. A. B. HAGNER, Justice.

A true copy. Test: 7-3 R. J. MEIGS, Clerk,

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Special Term for Orphans' Court Business.

In re estate of Samuel Pumphrey, deceased.

On consideration of the petition of Elizabeth A. Pumphrey, Nellie F Pumphrey and Annie L. Pumphrey, praying the appointment of Chastain C. Meador as administrator of above decedent, it is by the Court this 13th day of February, 1885, ordered that the prayer of said petition be granted, unless cause to the contrary be shown on or before Friday, the 6th day of March, 1885 Provided a copy of this order be published in the Washington Law Reporter three times before said last mentioned date.

A. B HAGNER.

A true copy. Test; H J RAMSDELL,

Feb. 13th, A. D. 1885. 7-4 Register of Wills, D C.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Jane Rutledge, late of Niles, Michigan, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of February next; they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 13th day of February, 1885

CHARLES A. CHAPIN,

7-3 Adm'r 1331 F St. N W.

JAS. R. COOK and N. DUMONT, Rooms 3 and 4. 1331 F St. N. W.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 12th day of February, 1885.

ZECHARIAH CHAFEE, trustee, v. WILLIAM S. HOYT ET AL. } No. 9175. Eq. Doc. 24.

On motion of the plaintiff, by Mr. J. J. Darlington, his solicitor, it is ordered that the defendants Wm. S. Hoyt, Edwin Hoyt, jr., Chas. G. Francklyn and Susan S. Francklyn, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice, &c.
A true copy. Test: 7-3 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February 10, 1885.

In the matter of the Estate of Jane Duncan, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Mary Marks

All persons interested are hereby notified to appear in this court on Friday, the 6th day of March, next, at 11 o'clock a. m., to show cause why the said Letters of Administration, on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

By the Court. A. B. HAGNER, Justice.
Test: H. J. RAMSDELL, Register of Wills.
WILLIAM T. BAILEY, Solicitor. 7-3

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term of Orphans' Court Business. February 10, 1885

In the matter of the Estate of Joseph W. McCorkle, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased. has this day been made by James P Hambleton, a creditor

All persons interested are hereby notified to appear in this Court on Friday, the 6th day of March next, at 11 o'clock, a. m., to show cause why Letrs of Administration on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B HAGNER, Justice.
Test: H J RAMSDELL, Register of Wills.
ISAAC H. FORD and JOHN N. OLIVER, Solicitors. 7-3

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business February 13, 1885.

In the matter of the Estate of Sabra P. Abell, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Charles R. Abell

All persons interested are hereby notified to appear in this court on Friday, the 6th day of March, next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

By the Court. A. B. HAGNER, Justice.
Test: 7-3 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business February 13, 1885

In the case of James L. Barbour, Administrator of Bridget M Fitzmorris, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 13th day of March, A. D. 1885, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 7 H. J. RAMSDELL Register of Wills.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 21st day of January, 1885.

ANN MARIA BOOTH, Complainant, v. CHARLES E. FRASER ET AL., Defendants. } No. 9185. Eq. Doc. 24.

On motion of the plaintiff, by Messrs. Linton & Darlington, her solicitors, it is ordered that the defendant, Martha Booth cause her appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.
A true copy Test: 4-3 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE,

That the subscriber, of Washington City, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Samuel M. Barker, late of the District of Columbia, dec'd

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of December, 1884.
WILLIAM M. BARKER, Administrator.
R. W. MCPHERSON, Solicitor. 6 3

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 29th day of January, 1885.

MARK W. SAMUEL Complainant v. BRAINARD H. WARNER ET AL. Defendants. } No. 9281. Eq. Doc. 24.

On motion of the complainant, by Mr. E. H. Thomas, his solicitor, it is ordered that the defendant, Arnold Tawzer, cause his appearance to be entered herein on or before the first rule day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
True copy. Test: 6-3 R. J. MEIGS, Clerk

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February, 6, 1885.

In the matter of the Estate of John B. Randolph, late of the United States Navy, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by John B. Randolph.

All persons interested are hereby notified to appear in this court on Friday, the 27th day of February next, at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. ALEXANDER B. HAGNER, Justice.
Test: 6 H. J. RAMSDELL, Register of Wills.

THIS IS TO GIVE NOTICE

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Catharine Robinson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of February next; they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 10th day of February, 1885.
ALBERT F. FOX.
H. B. MOULTON, Solicitor. 7 3 Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 12th day of February, 1885.

ZECHARIAH CHAFEE, trustee, v SAMUEL BLATCHFORD ET AL. } No. 9174. Eq. Doc. 24.

On motion of the plaintiff, by Mr. J. J. Darlington, his solicitor, it is ordered that the defendant, Burr W. Griswold, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 7-3 R. J. MEIGS, Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February 6, 1885.

In the case of Francis M. Lazenby, Administrator of Thomas A. Lazenby, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 13th day of March A. D. 1885, at 11 o'clock a m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 6 H. J. RAMSDELL, Register of Wills.

JOSEPH J. WATERS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business January 30, 1885.

In the case of Luthur Martin the deceased adm'r of William Martin, deceased. James S. Edwards, the administrator w. a., of the said Luther Martin, has, with the approval of the Court, appointed Friday, the 6th day of March, A. D. 1885 at 11 o'clock a. m, for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Administrator w a. will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

Test: 6 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Holding a Special Term for Orphans' Court Business. February 2nd, 1885.

In the case of James Biggins, Executor of Patrick Hanaphy, deceased, the Executor aforesoid has, with the approval of the court, appointed Friday, the 27th day of February A. D. 1885, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them; Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test; 6 H. J RAMSDELL. Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business January 30, 1885.

In the matter of the Estate of Caroline Elizabeth Van Newkirk, late of the City of Washington, District of Columbia deceased.

Application for Letters of Administration on the estate of the said deceased, has this day been made by Benjamin F. Evans, of the City of Washington.

All persons interested are hereby notified to appear in this Court on Monday the 2nd day of March next at 12 o'clock, m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter pre vious to the said day.

By the Court. A. B HAGNER, Justice.

Test: H. J. RAMSDELL, Register of Wills.

E. B. HAY, Solicitor. 5-3

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration d. b n, c. t. a, on the personal estate of Elijah W. Hager, late of Onondaga, N. Y., dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of January next; they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 28th day of January, 1885

5-3 JOHN TRIMBLE,

HAGNER & MADDOX, Sol'rs. Administrator d.b.n.,c.t.a.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Archibald C Spalding late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of January, 1885.

5-3 LUCY SPALDING, Ex'x.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Joseph D. Harris, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of January, 1885.

ELIZABETH W. HARRIS, Executrix.

R. F. LEIGHTON, Solicitor 5-3

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Holding an Orphans' Court. Jan 30, 1885.

In the matter of the Estate of Hamilton Hughes, late of the District of Columbia, deceased

Application for Letters of Administration on the estate of the said deceased, has this day been made by William H. Hoover, with the consent of the alleged next of kin.

All persons interested are hereby notified to appear in this Court on Friday, the 27th day of February next at 11 o'clock a m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B HAGNER. Justice.

Test: H J. RAMDELL, Register of Wills.

BIRNEY & BIRNEY. Solicitors. 5-3

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Luther Martin late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28d day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28d day of January, 1885.

JAS. S. EDWARDS,
Administrator, c. t. a.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Sara P. Copeland, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of January next: they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of January, 1885.

EDWIN B. HAY.

4-3 Administrator.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business. Letters Testamentary on the personal estate of William Middleton, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of January next: they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 19th day of January, 1885.

CATHERINE MARY MIDDLETON.

RICHARD P. EVANS, Solicitor. 4-3 Executrix.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 27th day of January, 1885.

THOMAS J FISHER vs. JOHN R TUCKER ET AL., Heirs of Thomas Tudor Tucker. } Equity. No. 9305.

On motion of the plaintiff, by Hillyer & Ralston his solicitors, it is ordered that the defendants, H Tudor Tucker Fanny Bland Graham, J. R. Graham, Mary T. Magill. Evelina Powell, W. L Powell, Virginia Edwards, John E Edwards, Elizabeth Dallas Tucker, Virginia B Tucker, Dallas Tucker, Hattie A. Tucker, Cassie D Brown, John Thompson Brown, John R. Tucker, Emma B. Tucker, Evelina T. Lucas, D. B Lucas, Nannie S. McLaughlin, I Fairfax McLaughlin, St. George Tucker Brooke, Mary B Brooke, Frank J. Brooke, Gay Bentley Brooke, D. Tucker Brooke, Lucy Higgins Brooke, Henry L. Brooke, Elizabeth D. Brooke, Laura Beverly Bedinger, Everett W Bedinger, Elizabeth Gilmer Tucker, Walker Gilmer Tucker, Lizzie Edwards Tucker, Evelina Tucker, Luey Richardson, Robert B Richardson, Annie Tyler, Lyon G. Tyler, Eliza Taylor Tucker, Alfred B Tucker, Cynthia B T. Coleman, Charles W. Coleman, B. St George Tucker, Eliza C Tucker, Fannie B B. T. Taliaferro, Julia Clark Tucker, Nathaniel Beverly Tucker, Wm. Francis Peyton Tucker, John R. Bryan Delia Page, John R. Page, Fannie Carmichael, S W. Carmichael, Georgia B. Grinnan, A. G. Grinnan. John R Bryan, Jr., Margaret R Bryan, St. George Tucker C Bryan, Joseph Bryan, Isabel S. Bryan, C. B Bryan, Mary S. C Bryan, Fannie Bland Brown, H. Peronneau Brown, Virginia C. Braxton, St George Tucker Coalter, Ada B Lewis Tucker, Virginia Tucker, Virginia Lewis Tucker, Francis M Tucker, Mary Thornton Tucker, and Nathaniel Beverly Tucker, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day, otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Asso. Justice.

A true copy. Test: 5 R J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Catharine Robinson, late of the District of Columbia, dec'd

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of January next; they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 27th day of January, 1885.

MICHAEL BOYLAND, Administrator.

H. B. MOULTON, Solicitor. 5-3

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 30, 1885.

In the matter of the Will of Frances A. Lockwood, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Margaret M. Lockwood.

All persons interested are hereby notified to appear in this court on Friday, the 27th day of February next, at 11 o'clock a m., to show cause why the said Will should not be proved and admitted to probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B HAGNER, Justice.

Test: 5-3 H. J. RAMSDELL, Register of Wills.

HENRY M. BAKER, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 27th day of January, 1885.

FREDERICK H. PAINE v. ELIZABETH M BURNETT, GEORGE H BURNETT ET AL. } No. 9307.

On motion of the plaintiff, by Mr. Woodbury Blair, his solicitor, it is ordered that the defendants, Elizabeth M. Burnett, George H. Burnett, Alexander M. Burch and wife, Eliza Burch Brodnax and John Brodnax, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER Justice.

A true copy. Test: 5-3 R. J. MEIGS, Clerk

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding an Orphans' Court. Jan 30, 1885.

In the matter of the Estate of Charles M. Murdock late of Arequipa, Peru, formerly of Province of Ontario, Canada, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Frederick W. Jones, at the request of decedent's next of kin.

All persons interested are hereby notified to appear in this court on Friday, the 27th day of February, next, at 11 o'clock m., to show cause, if any they have, why Letters of Administration on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: 5-3 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 30, 1885.

In the matter of the Estate of Mary Shannon, late of the District of Columbia, deceased

Application for Letters of Administration on the estate of the said deceased has this day been made by James Fullerton.

All persons interested are hereby notified to appear in this court on Friday, the 27th day of February next, at 11 o'clock a. m., to show show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B. HAGNER, Justice.

Test: 5-3 H. J. RAMSDELL, Register of Wills.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John Casey, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of January, 1885.

5-3 SAMUEL BIEBER,

LEON TOBRINER Solicitor. Administrator.

THIS IS TO GIVE NOTICE.

That the subscriber of Washington City, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration d b. n., on the personal estate of William Martin, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of January, 1885.

5 CHARLOTTE A. MARTIN.

EDWARDS & BARNARD, Sol'rs. Adm'x de bonis non.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

WILLIAM BURGESS ET AL. v. HERMAN HOLLANDER ET AL. } No. 9,295, Eq. Doc. 24.

This cause being referred to me to state the debts of the defendant, Herman Hollander, and assets, notice is hereby given that I shall proceed under the said order of reference on Thursday, February fifth, 1885, at one o'clock p m., at my office, in the United States Court-house, at which time and place all creditors of the said Herman Hollander, and persons interested in the said matter, may appear and present their claims.

5-1 JAS G. PAYNE, Auditor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 28th day of January, 1885.

JULIA A SMITH v. MARIA JEFFRIES ET AL } No. 9303, Equity.

On motion of the plaintiff, by Mr Woodward, her solicitor, it is ordered that the defendants, the unknown heirs of Clarissa Bruce cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.

True copy. Test: 5 R. J. MEIGS, Clerk

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 6th day of January, 1884.

TAYLOE ET AL. v. WARREN ET AL. } No. 9269. Eq. Doc. 24.

On motion of the plaintiffs, by Mr. Wm. Tayloe Snyder, their solicitor, it is ordered that the defendants, Eugenia Phœbe Warren and George B Warren, her husband, Mary Calmes Perry, Thornton Tayloe Perry, Edward Tayloe Perry Estelle Tayloe Paine, John Paine, and Ogle Tayloe Paine, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default

By the Court. W. S. COX, Justice.
A true copy. Test: 4-3 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscribers of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration c t. a on the personal estate of Chas. D. Gilmore, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 23d day of January, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 23d day of January, 1885.

SAM'L R. BOND.
4-3 JOB BARNARD,
Administrators, c t. a.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, this 24th day of January, 1885.

JAMES B. HOUSTON vs. MARY T. GARLAND ET AL. } In Equity, No. 8982.

Ordered, this 24th day of January 1885, that the offer of Ellen R. Goldsborough to purchase at private sale the east 24.23 feet front by depth of original lot 6, in square 121, and improvements, this day reported by the trustees herein, be, and the same is hereby accepted, and that said sale be, and is hereby ratified and confirmed, unless cause to the contrary be shown on or before the 24th day of February, 1885.

Provided, a copy of this be published once a week for three successive weeks prior to said day in the Washington Law Reporter.

The report states the amount of sales at $5.500.

W. S COX, Justice.
A true copy. Test: 4 R. J. MEIGS. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

FRANCIS H BROWN v. GEORGE A. BROWN ET AL. } Equity No. 9011. Docket 24

Fendall E Alexander, the trustee herein, having reported that he has sold part of lot numbered seven (7) in square numbered Two Hundred and Eleven (211), as described in the bill of complaint herein, containing 3230 square feet, at eighty (80 c) cents per square foot, aggregating the sum of $2,584 00, to one Anna E. Tracy, and that said purchaser has offered to assume the payment of the taxes and assessment thereon with the accumulated penalties and interest thereon, amounting to the sum of $781 35, as set forth in his said report, and to pay the balance of said purchase money, to wit: $1 802 65, as stated in said report; it is, this 21st day of January, A. D 1885, by the Court, ordered and decreed, that said offer be, and the same is, hereby approved, and said sale be, and the same is, hereby ratified and confirmed, unless cause to the contrary thereof be shown herein on or before the 21st day of February, A. D. 1885.

Provided a copy of this order be published once a week for three successive weeks, before said last mentioned day, in the Washington Law Reporter.

By the Court. W. S COX, Justice.
A true copy. Test: 4-3 R. J MEIGS. Clerk

THIS IS TO GIVE NOTICE.

That the subscriber of Pittsburgh, Pennsylvania, hath, obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration c t. a on the personal estate of Alexander Murray, late of the U. S. Navy, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 13th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of January, 1885.

4-3 GEO. W, GUTHRIE.
WORTHINGTON & HEALD, Sol'rs. Adm'r c. t. a.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 21st day of January, 1885.

THOMAS J. FISHER. v. WILLIAM SHARON ET AL. } No. 9298. Eq. Doc. 24.

On motion of the plaintiff, by Messrs. Hillyer & Ralston, his solicitors, it is ordered that the defendants, Wm. Sharon and Sarah Althea Hill, otherwise Sarah Althea Sharon, cause their appearance to be entered herein on or before the first rule day, occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.
A true copy Test: 4-3 R J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, January 30, 1885.

In the case of Frank D Orme and John A. Hamilton, Executors of Jane E. Haswell, dec'd, the Executors aforesaid have, with the approval of the court, appointed Friday, the 27th day of February, A D. 1885, at 11 o'clock a. m, for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 5 H J RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 27th day of January, 1885.

WILLIAM SHARON vs. JOHN R TUCKER ET AL., Heirs of Thomas Tudor Tucker. } Equity. No. 9304.

On motion of the plaintiff, by Hillyer & Ralston, his solicitors, it is ordered that the defendants, H Tudor Tucker Fanny Bland Graham, J. R. Graham, Mary T. Magill, Evelina Powell, W. L Powell, Virginia Edwards, John E. Edwards, Elizabeth Dallas Tucker, Virginia B Tucker, Dallas Tucker, Hattie A. Tucker, Cassie D Brown, John Thompson Brown, John R. Tucker, Emma B. Tucker, Evelina T. Lucas, D. B Lucas, Nannie S. McLaughlin, I. Fairfax McLaughlin, St. George Tucker Brooke, Mary B. Brooke, Frank J. Brooke, Gay Bentley Brooke, D. Tucker Brooke, Lucy Higgins Brooke, Henry L. Brooke, Elizabeth D. Brooke, Laura Beverly Bedinger, Everett W Bedinger, Elizabeth Gilmer Tucker, Walker Gilmer Tucker, Lizzie Edwards Tucker, Evelina Tucker, Lucy Richardson, Robert B Richardson, Annie Tyler, Lyon G. Tyler, Eliza Taylor Tucker, Alfred B Tucker, Cynthia B T. Coleman, Charles W. Coleman, B. St George Tucker, Eliza C. Tucker, Fannie B. B. T. Taliaferro, Julia Clark Tucker, Nathaniel Beverly Tucker, Wm. Francis Peyton Tucker, John R. Bryan Delia Page, John R Page, Fannie Carmichael, S W. Carmichael, Georgia B. Grinnan, A. G. Grinnan, John R Bryan, Jr., Margaret R. Bryan, St. George Tucker C Bryan, Joseph Bryan, Isabel S Bryan, C. B Bryan, Mary S. C Bryan, Fannie Bland Brown, H. Peronneau Brown, Virginia C. Braxton, St George Tucker Coalter, Ada B Lewis Tucker, Virginia Tucker, Virginia Lewis Tucker, Francis M Tucker, Mary Thornton Tucker, and Nathaniel Beverly Tucker, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day, otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Asso. Justice.
A true copy. Test: 5 R J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Holding a Special Term for Orphans Court Business. January 30th, 1885.

In the case of Ira W. Hopkins, administrator of Thomas Riggles, deceased, the Adm'r aforesaid has, with the approval of the court, appointed Friday, the 20th day of February, A. D 1885, at 11 o'clock a m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 5-3 H. J. RAMSDELL, Register of Wills.
GEO. W. SALTER, Solicitor.

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Washington Law Reporter

WASHINGTON - - - - - - February 21, 1885.

GEORGE B. CORKHILL - - - EDITOR

Letters of Administration as Evidence.

In 1 Greenleaf on Evidence, § 41, *ad finem*, under the head of presumptive evidence, we find this proposition: "But the presumption of the common law (of death,) independent of the finding of the jury, does not attach to the mere lapse of time short of seven years, unless letters of administration have been granted on his estate within that period, which, in such case, are conclusive proof of his death." It seems to us that the latter part of the proposition does not correctly state the law; for when the test of reason is applied it fails to stand as stated, nor do the authorities support it.

In the first place this is based on the supposition that the letters of administration could not have been issued, unless the death of the intestate were conclusively proved, and, also, upon the fact that they have not as yet been withdrawn; but as to this it is to be noticed that the Probate Court does not pass directly upon the fact of the death of the intestate, but simply whether the party now in court, applying for letters, is legally entitled to them. It is true that the supposed death of the intestate is set forth in the petition, which is always sworn to. But this does not alter the fact that the judgment of the court is upon the right of the present petitioner to have the letters issued to him, and not upon the question whether or not the intestate is dead. It is judgment only collaterally upon this question; and hence, to say that from the mere fact that letters have been granted by the court upon the estate of the intestate, there arises a conclusive presumption of death, seems to us not to be a sound proposition of law.

If we suppose, for instance, that such is the law, we can readily see how embarrassing it would become in certain cases which may happen, and which doubtless have happened. For example, consider that A, as administrator of C, has brought suit against B, to recover something due the estate of C. B demands proof of the death of C, and thereupon A produces his letters of administration, regularly granted by the court, to prove his authority to sue in that capacity. These, according to such supposition, are *conclusive* proof of the death of C, and if he is at that moment in court, alive and well, B would be wholly denied the right to say that he was alive. What the effects also of this rule in such cases would be upon C himself, might prove to be very inconvenient to him; and we think that a rule of law leading to such absurd conclusions, would not for a moment be recognized upon examination by the courts, nor do we believe that such is the law upon the authorities, for in Newman v. Jenkins, 10 Pick., 515, (the authority relied upon by Mr. Greenleaf for the proof of his proposition), the court does not say that in every case the fact that letters have been granted is conclusive proof of death, nor, in fact, that it is so in any case where the pleading of the defendant is proper. But what the court does say is simply that, as the defendant in that case had not filed any plea in abatement in order to avail himself of such objection, the production in court of the letters was conclusive proof of death, *for the purposes of that case.*

The court incidentally adverts to the fact that something might perhaps follow from that conclusion, if the supposed intestate could be produced in court, or proved to be alive and well; but it does not go into that matter at all, as it considered that it was not involved in that case; and the whole effect of the decision is merely that the letters were *conclusive* proof of death, for the purposes of that case. And it is to be inferred from the language of the court, that had the defendant filed a plea in abatement, the letters would not have been held conclusive even; but that, in that case, and all others involving the same question, the defendant could offer evidence showing that the supposed intestate was still alive; and, therefore, that the production of his letters by an administrator is not conclusive proof of the death of the supposed intestate. We do not believe that there is a single

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case which expressly decides that, in all cases, letters are conclusive proof of death without any restrictions; and upon reason, we do not think that Mr. Greenleaf has correctly stated the law; and the authority, upon which he relies, fails to support him in the assertion of his proposition in such general and unrestricted terms; and, further, that letters are no *more* than *prima facie* evidence of death. The case of Moons v. De Bernales (1 Russ., 300, 306, 307), indeed, decides that they are not *prima facie* evidence, even in favor of the person who sues as administrator in the cause. *Et vide*, 1 Phil. Ev., 344, and N. 615, P. 858, where Moons v. De Bernales and Newman v. Jenkins, *supra*, are noticed; Peake's Ev., 343; English v. Murray, 13 Tex., 366; French v. Frazier, 7 J. J. Marshall, 426; Lancaster v. Ins. Co., 62 Mo., 121; Cunningham v. Smith, 70 Penn. St., 458; Tisdale v. Ins. Co., 26 Iowa, 170; McKimm v. Riddle, 2 Dall., 100; French v. French, 1 Dick., 268; Thompson v. Donaldson, 3 Esp. N. P. C., 63; Wharton Ev., 810, 1278.

BOOK NOTICES.

THE LAWS OF MEXICO; a Compilation and Treatise Relating to Real Property, Mines, Water Rights, Personal Rights, Contracts and Inheritances. By FREDERIC HALL, Counsellor at Law. San Francisco: A. L. BANCROFT & Co., 1885.

We are somewhat surprised to receive a book on this subject written and published in the United States, and the value of it is readily perceived. This work contains both the laws of Mexico with respect to the subjects stated, and a commentary upon them, and will prove of great value to all who are in any way concerned with the law of that country, and a knowledge of them becomes more necessary every day. A lawyer in modern times must know much more than the laws of his own country to be very successful, and this work gives him free and easy access to those of Mexico. The author has had unusual advantages for becoming acquainted with them, and every page carries upon its face the conviction that he has carefully, accurately and learnedly availed himself of all the means within his power to make the work complete as possible. It is well written, and will undoubtedly prove very valuable to many. The printing and binding are in the usual elegant style of Messrs. Bancroft & Co.

Supreme Court District of Columbia

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

THE CENTRAL NATIONAL BANK ET AL. *vs.* ANNIE G. HUME ET AL.

Decided December 19, 1884.
The CHIEF JUSTICE and Justices MAC ARTHUR and JAMES sitting.

EQUITY. Nos. 7,906, 8,011, 8,012 and 8,013, consolidated.

1. In a proceeding in equity an administrator, where acting in behalf of the creditors, may attack a transaction of his decedent as fraudulent.
2. The claims of creditors upon the proceeds of a life insurance policy, taken out by an insolvent creditor for the benefit of his wife and children, extend only to the premiums paid by him since the date of his insolvency; after this deduction the beneficiaries are entitled to the remainder.

Mr. Justice MAC ARTHUR delivered the opinion of the court.

In the case of the Central National Bank of Washington against Hume, with which case three others are consolidated, the court has instructed me to announce its decision.

The suits are against four different insurance companies, and the object is to subject the proceeds of the policies to the payment of creditors and to include them among the assets of the deceased intestate.

There are two or three preliminary questions which were discussed at some length during the hearing, and which can be disposed of without much observation. One relates to the parties. The Central National Bank, it appears, was the owner of three notes, perhaps four, and it is said all of these notes have been secured, and all of them have been paid but one, and that is secured by endorsement, and that, therefore, the Central National Bank cannot maintain a pure creditor's bill where it holds security for its indebtedness. It was also argued that an administrator is estopped from attacking the transactions of his intestate as fraudulent.

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Another point which was argued in this connection, relates to the consolidation of the suits, and a motion was made to rescind the order consolidating them, because the defendant alleges that he is injured by that order, and that it was passed without his consent, and in his absence. The court have come to the conclusion, without discussing those points, to decide them all against the defendant and in favor of the plaintiffs.

The policies involved in this suit were issued by the Life Insurance Company of Virginia, on the 23d of April, 1872, for $10,000; by the Maryland Life Insurance Company, on February 17, 1881, for 10,000; by the Connecticut Mutual Life Insurance Company, June 9, 1881, for $10,000, and by the Hartford Life Annuity Company for $5,000. Two of these instruments were made in the name of Mrs. Hume, and all were made for her benefit and payable to her.

The ground upon which the complainant proceeds is that Mr. Hume, at the time these policies were effected, was insolvent; that the premiums were paid out of his means, and that they, therefore, insured to the benefit of the creditors, and came under the provision of 13th Elizabeth, which is the law of this District.

It is argued that a policy of insurance is a chose in action, and when issued to the husband belongs to his estate; and that it makes no difference as to creditors whether it is taken in his own name or that of his wife so long as he paid the premiums thereon. Numerous cases are cited to show that it is assignable and transferable like any other piece of property, and if transferred when insolvent, for the purpose of hindering, defrauding or delaying his creditors, it was subject precisely to the same course as any other property which he might have transferred for the same purpose.

The broad assertion that a policy of insurance upon which premiums have been paid is a chose in action, is to be taken with a good deal of limitation. Judges and courts have spoken of them commonly and generally as choses in action like bonds and promissory notes, going to his administrator and assignable in the market during his life time. This is scarcely so in an unlimited sense. A promissory note represents an existing indebtedness. A bond does the same. A policy of insurance does not and cannot until the death of the assured party takes place.

The Supreme Court of the United States have recently decided that a policy of insurance cannot be assigned to any one not having an insurable interest in the life of the assured. The Supreme Court of the State of New York have decided that a policy of insurance effected for the benefit of the wife, is not assignable at all, holding under their statute that allows a husband to insure his life for the benefit of his wife and children free and clear from the claims of his creditors, that it would be against public policy to allow a wife to traffic in that which was consecrated to the benefit of the family.

Many of the States, indeed most all of them, have enacted laws by which a husband can assure his life for the benefit of his family free and clear from all liability to his creditors; and I have no doubt that upon a proper construction of these statutes, the States where they have been passed will ultimately arrive at the same conclusion reached by the Court of Appeals of the State of New York. And the tendency of the decisions in the Supreme Court of the United States, judging from the one to which I have just referred, is in that same direction.

So that we see a policy of insurance has many disabilities that do not belong to choses in action generally, and that it is the tendency of legislation, as well as of judicial construction, to invest it more and more with those attributes that will give it the effect it was intended to subserve, to wit, the protection and settlement of families.

I have stated that the policies here were effected for the benefit of the wife, and two of them made directly in her own name. What is the effect upon a policy of that description growing out of the fact that the husband at the time he undertakes to make the provision is in embarrassed circumstances? That is the main question before us.

As I have stated, many cases have been referred to which establish the doctrine, that when the husband effects the policy

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in his own name, it goes to the benefit of his creditors, and it is sought to apply that principle to this case. But Mrs. Hume did not derive anything by assignment, nothing by transfer. What she claims under this policy never belonged to the estate of her husband, never formed an asset or a basis of credit. The proceeds of the policies stand entirely in a different relation to his estate from a contract directly with himself; he never had any control of them; he never could assign or transfer them. The decisions are to the uniform conclusion that the moment a policy of insurance is effected for the benefit of a wife upon the life of her husband, it becomes her property *eo nomine*, and nobody has control of it but herself. She may assign it, unless there is some public policy against it, and it is just as much a vested right in the married woman as any other portion of her separate estate.

Can the fact that her husband paid the premiums deprive her of this vested right without any act on her part to forfeit it?

It is not pretended that Mrs. Hume was aware of her husband's insolvency, or that he intended to hinder and delay his creditors. She stands in the position of a perfectly innocent person, unaffected by anything corrupting the contract of insurance.

There is a decision in Kentucky, that of Stokes & Son *vs.* Kobbe, 8 Bush, 534, where three policies of insurance were effected in the name of a married woman. With regard to one of them, the court came to the conclusion that it was an assignment in point of fact, although in her name, and gave the proceeds to the creditors of the husband who was insolvent.

With regard to another, they allowed the wife to take the money because it did not clearly appear that the husband was insolvent when he paid the premiums. But with regard to the smallest of the three, the court held that inasmuch as the husband had taken it out and paid the premiums himself, it stood the same as if it had been taken out in his own name, and they allowed the creditors to assert their claim to the proceeds of the policy.

But the effect of that decision is entirely neutralized by the fact that the same court, four years afterwards, in the case of Thompson *vs.* Cundiff, 11 Bush, 569, declared exactly the opposite doctrine. That was where an insolvent husband took out two policies of insurance in the name of his wife, and the court held that, in the absence of fraud on the part of both the husband and the wife, the interest in the policies vested in the wife as her sole and separate property, notwithstanding the fact that her husband was insolvent at the time he effected them, and, to use their own words, they doubtingly gave the creditors the benefit of the premiums which he had paid during the period of his insolvency, together with interest thereon, which amount they charged on the widow.

It is a curious fact that wherever it has been claimed that an insolvent debtor can do nothing for the protection of his family, the State legislatures have stepped in immediately and enacted laws to the effect that a policy can be effected for the benefit of a married woman free and clear of any claim of her husband's creditors. In some of the States the amount of the premiums is left at large, but in others they have put limitations on the premiums, beyond which an insolvent husband cannot insure his life for his family. In Kentucky when the supreme court announced this obnoxious doctrine, they passed a law of that description, and that law was passed during the interval between the two cases which I have just alluded to; and the fact that the law is referred to by the court in the last case, who say that they do not mean to determine that a policy void as to creditors at the time it was effected, is protected at all by the State law, and so they proceed to decide the case upon principles applicable at common law, and hold the doctrine which I have last announced.

So far as Kentucky is concerned we have her last voice, and probably it will be the last as her legislation has ended all dispute on that subject.

At an early day the Supreme Court of Pennsylvania had this same point before them in Elliott's Appeal, 50 Penn., p. 75. There a husband had effected a policy in his own name, and assigned it to his wife when he was insolvent, and the court held that the assignment was void and the creditors had the benefit of the policies. In closing that opinion, however, the court made a distinction, and they say:

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"We are to be understood, in thus deciding this case, that we do not mean to extend it to policies effected without fraud directly and on their face for the benefit of the wife and payable to her. Such policies are not fraudulent as to creditors, and are not touched by this decision."

The legislature in Pennsylvania, seeing that there might be uncertainty on this question, interposed within two years and passed one of the acts to which I have just referred, and they declare that a policy taken in the name and for the benefit of a married woman is free and clear from all claims of all creditors of her husband.

Two cases in Pennsylvania follow that in which that statute was recognized, but in which they give effect to the *obiter* in Elliott's Appeal, and in speaking of it they adopt it as a true exposition of the doctrines laid down so far as the policies for the benefit of the wife are concerned.

In the case of Pentz, administrator, against Makepeace, 65 Indiana, 345, the first clause of the syllabus reads:

"An insurance policy issued upon the life of a husband for the benefit of his wife, is her property, and an effectual assignment and delivery thereof to another during the lifetime of the husband, can be made only by her."

And in the opinion they hold the following language:

"If, however, it were conceded (which we do not concede) that the creditors of the assured might in any case institute and maintain an action for the recovery of any part of the amount of a policy of insurance procured by an insolvent debtor upon his own life, for the benefit of his wife or family, upon the ground that the premiums therefor were paid with money which ought to have been applied to the payment of the debts of the assured to such creditors, and that such payment of such premiums by the assured was a fraud upon the rights of such creditors, we are clearly of the opinion that the very utmost which the creditors could possibly recover in such action would be the aggregate amount of the premiums thus paid. The creditor could not, in any event, derive a profit from, or recover on, more than the sums of money actually paid by the debtor in premiums upon a policy of insurance upon his own life payable to or for the benefit of his wife or any member of his family."

And such appears to be the whole current, both judicial and legislative, on this subject.

We are disposed to apply that doctrine to this case. A considerable number of authorities were read upon the argument as to the sacredness of the claims of creditors, and as to the injustice of depriving them of the benefit of the property of their debtors, and such observations were undoubtedly justified by the cases in which they were pronounced. In fact, we are all very familiar with the general strength of language in which the relation is discussed which exists between the creditor and the debtor. Many other relations, however, are equally important; the relations which a man bears to his wife and to his family, for instance. We do not, I am very sorry to say, generally find the courts so emphatic in regard to the latter species of relations as to the former. Perhaps that results from the fact that courts are more generally engaged in adjudicating pecuniary rights than those of a social character. But the rights which result from the family relations are certainly quite equal to those which result from debtor and creditor. You might blot out every law and extinguish every right for the collection of debts, and the community would scarcely feel the shock. But if you abrogated the law of marriage and its relations, you would not only rupture the moral, but also the physical organization of society. Where, therefore, the two claims come in conflict, the courts should adjudicate between them with justice and fairness to both.

When a man has made provision for his wife, the law recognizes that he has performed a social and moral duty The state has a deep interest in having families of healthy children properly educated and settled in life, as well as to have creditors paid what is due, and whatever will promote that object should receive its due share of attention.

These remarks are made more especially because we can distinguish here between the rights of the creditors and the rights of the family, and do justice to both

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of them. What right have the creditors to what never belonged to the estate? What right have they to a vested right in a married woman for her protection and that of her family? What right have they to a species of property that never existed until after the death of the husband? We presume that no creditor of Thomas L. Hume would dare to stand up and make the statement that he had been misled by these policies, or that he had extended credit to him on their strength.

So that it strikes the court very forcibly that where we can protect a settlement on a family, by giving back to the claims of the creditors all that has been taken from them, we are doing justice and equity to all, and it is all the creditors have a right to demand.

There are some considerations which lead to and justify this conclusion also. It appears that Mrs. Hume, at the time she became the wife of Mr. Hume, was the daughter of a man of considerable means, Mr. Pickrell, owning an estate near the city; that she is an only child, and that after the marriage Mr. Hume and his family lived mostly at that estate, scot free, unless he contributed from his grocery establishment something to his support. In fact the whole family lived there as if he had been born into it. Mr. Pickrell, and after his death, Mrs. Pickerel and Mrs. Hume, placed in him the most unreserved confidence. Mr. Pickrell endorsed for him, and, after his death, Mr. Hume became his administrator; whatever he collected out of the estate for the benefit of Mrs. Pickrell, went into his business.

I know it is said that Mr. Hume was guilty of dishonesty, if not crime. But it is to be remembered that he was not a wasteful man, that he did not dissipate his time, that he appears to have been devoted to his business, and that if he took anything, either from the estate of Mr. Pickrell or from anybody else, it was for the benefit of that business, and he did all he could to keep up the sinking ship.

Having these relations with the family, and having encroached somewhat, I will not say how extensively, upon the patrimony of the wife, I think without going very far we can find a proper motive that he had in effecting these insurances for his wife and family, and we do not think it is the duty of a court of equity to bring a telescope to examine his mind closely for some motive that would render these transactions void or fraudulent, when there is a motive so apparant on the face of it. The law recognizes the natural love and affection of a husband for his wife and family, and any settlements he makes upon them will be upheld, without any other consideration whatever, if they are free from fraud.

It is said that these insurances provided an unreasonable amount and exhibit clearly the recklessness with which the intestate disregarded the claims of his creditors. In this connection, we are also reminded that Mrs. Hume herself is a lady of fortune; that she is the heir of her father and her mother; that her mother has a life estate in the property, and that she will inherit the whole of it upon her death, and inventories have been read to show that this estate is one of very considerable value. Mrs. Hume has not obtained the estate yet, and perhaps that is a sufficient answer. Another is, that its value is prospective, and what will be its value at the termination of the life estate is difficult to determine at present. In addition to all that, there are endorsements of Mr. Pickrell outstanding, and what may be the fate of those endorsements, it is impossible to conjecture. So that the matter is not in any way clear that Mrs. Hume will have a large estate independent of the policies. But suppose she has a moderate fortune of her own, one that would amply support her and her family by economy, is that any business of the creditors? What right have they to any portion of her separate estate to pay her husband's claims? The law says that they have none whatever. Considerations of that character should not weigh in the final adjudication of this case, if we give these creditors all they are entitled to.

It must be admitted that Thomas Hume at the time he effected the last three policies of insurance was hopelessly insolvent. We think that is a very doubtful fact with regard to the first policy which was taken out in 1873, and by looking over the schedules furnished by counsel,

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we should say that his insolvency is not established at an earlier date than 1874; and from that time onward to the point of his death, Mr. Hume was undoubtedly unable to meet the claims of his creditors, and that from that time he had no right in law to take from his means any property for the benefit of his family, as a settlement. But we can give the creditors every just right, every dollar they are entitled to, and give the widow and the children the benefit of the contract which was made for them; and we think that we have no more right to transfer the proceeds of these policies to the creditors than we would have to take Mrs. Hume's interest in Tunlaw for the same purpose.

The money has been paid into court. The decree must be entered decreeing the money to Mrs. Hume, and charging her with the amount of all the premiums that were paid upon the three policies from February, 1874, which we think is the proper time to adopt as the period when Mr. Hume's insolvency clearly appears.

A CASE on the question whether a statute intended to provide for public and general safety will sustain an individual action by a person injured by a negligent violation thereof, is that of Grant v. Slater Mill and Power Co. (14 R. I.), the following note of which we find in 23 Am. L. Reg., N. S., 484:

A local act of the legislature affecting the city of Providence provided that "every building already built, or hereafter to be erected, in which twenty-five or more operatives are employed in any of the stories above the second story, shall be provided with proper and sufficient, strong and durable, metallic fire escapes, or stairways, constructed as required by this act, unless exempted therefrom by the Inspector of Buildings, which shall be kept in good repair by the owner of such building, and no person shall at any time place any incumbrance upon any such fire escapes." Other sections of the act provide remedies as follows: "Any person violating any provision of this act wherein no penalty is herein otherwise prescribed, shall be fined twenty dollars for every violation thereof, and shall be fined not exceeding twenty dollars for each day's continuance of the said violation after the service of the warrant issued upon the first complaint. The Supreme Court in term time, or any justice thereof in vacation, may restrain by injunction any violation of this act, and may, according to the course of equity, secure the fulfillment and execution of the provisions thereof." The chief engineer of the fire department was charged with executing the provisions of the act. Held, that the scheme of the act was to secure safe structures as a police measure and for the general safety. Held, further, that it was not the scheme of the act to create any duty which could be made the subject of an action by individuals, and that no remedy in favor of individuals beyond what is expressly given in the act should be implied for mere neglect to perform the duties created by the act. Grant v. The Slater Mill and Power Co., 14 R. I.

Hence when one employed as an operative in a building subject to the act was compelled by a fire to jump from an upper widow and thereby suffered injuries, there being no fire escape on the building, and brought trespass on the case against the owner of the building to recover damages for his injuries, alleging the owner's violation of the duties imposed by the act: Held, on demurrer to the declaration, that the action could not be maintained. Id.; Aldrich v. Howard, 7 R. I., 199, distinguished; Id.; Couch v. Steel, 3 El. & B., 402, discussed; Id.—*N. Y. Daily Register.*

The Law as to Stray Dogs.

The other day, before Mr. Commissioner Kerr, an action was brought by Mr. Henry Sweeny, Dalston, against Mr. D. Dietz, landlord of the Crown and Cushion, London-wall, to recover the sum of £1 5s, expenses in keeping and restoring a stray dog. The plaintiff stated that the animal in question followed him on November 10 from Broad-street station to his place in Bishopsgate street. It remained about the place all day, and, in the evening, seeing the dog was a valuable one, he took it home with him and kept it till the 24th. In the meantime he advertised for the owner, the defendant, to whom he delivered the dog; but he had been unable to get any recompense for the trouble and expense he had been put to. Mr. George, who appeared for the defendant, submitted that it was the plaintiff's first duty to take the dog to the nearest police station. The judge said that no such duty was binding on anyone. The plaintiff, however, could not recover. He had done a kind and humane thing in taking the dog home and supplying it with food; but he was under no obligation to do so or incur expense in advertising. Defendant asked 5s. expenses. The judge refused to award a farthing, and said that plaintiff had been treated very scurvily.—*Irish Law Times.*

THE wise are always master of their own.

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Supreme Court of New Mexico.

HORNER *vs.* HARVEY.

The question whether, on a given state of facts, the relation of inn-keeper and guest exi.ts between the keeper of a hotel and a person stopping at the hotel, is one of law to be decided by court.

A conductor on a railroad train, who rents a room in a hotel at the terminus of his route, at a specified rate per month, which he used for sleeping and other purposes when there, is not a guest of the hotel.

AXTELL, C. J.—The facts in this case are substantially as follows: Harvey was a hotel keeper at Deming, the terminus of the Atchinson, Topeka and Santa Fe Railroad. Horner was employed as conductor on said railroad, and Deming was at one end of his route; he and some other conductors rented a room in Harvey's hotel at a specified rate per month, and when at Deming, used this room both as a sleeping room, and as a place where they could make up their accounts, and also as a place where they could receive their friends and for social amusements. When the train was in and his duties for the trip were over, he came to this room at his pleasure; the key was always left in the door. He did not register at the office of the hotel, nor did he inform any one of his arrival. He took his meals wherever he pleased, sometimes at the hotel restaurant where he had specified rates, and sometimes in the town. This method of living at this hotel had continued for about four months, when he came one morning, bringing with him a satchel containing over seven hundred dollars in gold coin. He went directly to his room. He was asked; "How did you get in?" "I went to the door, rapped on it, and waked up the conductor who was sleeping in there." There was always a conductor there in the absence of others, after he had made his run he would use the room, and when the next conductor came down, he would occupy the room in his place." He took his satchel with the coin in it into this room, and that night his satchel was opened and the coin stolen. No one connected with the hotel was informed by him that he had this money till after it was lost.

There was evidence and argument as to gross carelessness upon the part of the plaintiff, but in the view we take of this case, it is not necessary to refer to this. The primary question in the case is, was the relation between the parties that of inn-keeper and guest? If we decide this question in the negative, it will not be necessary for us to go farther.

The answer to this question, after certain facts found and admitted, is a question of law to be decided by the court.

The liability of inn-keepers is strict, and justly so; but it is a liability limited to their relation to travelers or wayfaring men. The law of civilized countries benignantly protects men away from home, and from those resources with which the denizen or citizen can guard himself from wrong, and protect his property from loss or injury. When the traveler comes to an inn and is accepted, he instantly becomes a guest. The inn-keeper, when he accepts him and his goods, becomes his insurer, and the inn-keeper must answer in damages for the loss or injury of all goods, money and baggage of his guest, brought within his inn and delivered into his charge and custody, according to the usage of travelers and inn-keepers; but he must be a guest, and before he can be a guest, he must be a traveler. When he ceases to be a traveler, or a transient, or wayfaring man and takes up a permanent abode even in an inn, he ceases to be an object of the law's especial solicitude, and he is no longer a guest, but a boarder, no longer a traveler but a citizen.

In considering the liabilities of inn-keepers in this connection, the words traveler and guest are always used correlatively. At common law, the inn-keeper was compelled to furnish lodging and entertainment for travelers and passengers, and he was bound to protect the property they brought with them when delivered into his care, and was liable if it was lost or injured. The length of time a man is at an inn makes no difference, so he retains his character as a traveler. Officers of the army and navy, and sailors and soldiers, are to be considered *prima facie* travelers and wayfarers, and it was upon this distinction that the case of Hancock v. Rand, 94 N. Y., 1, was decided. But are the employees of railroads engaged in running trains to be so considered? An engineer or conductor, who follows his employment and runs his regular trips, stopping over at each end of his route, either at his own house or at a hotel, is neither a traveler, a wayfaring man, nor a transient person. He is a citizen of the community at both ends of his route. The fact that he works upon a train which runs thirty miles an hour does not make him a traveler, any more than if he worked in the company's shops. If he goes to a hotel and rents a room by the month, he is no more a guest in the legal sense which fixes the liabilities of inn-keepers, than if he was a mechanic in the shops or a permanent citizen of the place. If Horner was not a traveler, he could not be a guest, and if he was not a guest, he could not maintain this action. On the evidence in this case, there was nothing for a jury to consider. It is a conclusion of law

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from the facts disclosed by his own evidence, that Horner was not a guest, and the court should have directed a verdict for defendant.

The judgment of this court is that the judgment of the district court be reversed, and the action dismissed. And that defendant recover his costs, both in the district and supreme courts to be taxed, and that he have execution for the same.

WILSON, A. J., concurred.

District Court, United States.

Western District of Pennsylvania.

No. 12, May Term, 1884. Criminal Docket.

UNITED STATES *vs.* HAGUE.

A pending prosecution upon a bill of indictment found for taking an illegal fee in a pension case, in violation of the act of Congress of June 20, 1878, fell with the repeal of that law by the act of July 4, 1884, the latter act having no saving clause as respects penalties incurred or past offences.

On motion in arrest of judgment.

Opinion by ACHESON, D. J. Filed January 22, 1885.

On the 8th of May, 1884, an indictment was found against the defendant for a violation of the act of Congress, approved June 20, 1878, entitled, "An Act relating to claim agents and attorneys in pension cases:" 20 Statutes at L., 243; Suppt. R. S., Vol. 1, p. 386. The defendant was put upon his trial at the last term of the court, and on October 22, 1884, was convicted. He has moved the court in arrest of judgment, upon the ground that prior to his trial and conviction the act under which he was indicted was repealed. And such is the fact. The act of Congress of July 4, 1884 (U. S. Statutes, last sessions, 48th Congress, p. 98), not only covers the whole subject-matter of the act of June 20, 1878, but in express terms repeals that act. It saves the rights of parties in certain contracts, but makes no reservation as respects penalties or past offences. It follows, therefore, that the prosecution here fell with the repeal of the act of June 20, 1878, upon the well settled principle that after the repeal of a statute there can be no further prosecution of a pending proceeding under it, unless there be a saving clause in the repealing act: United States v. Tynen, 11 Wall., 88; Abbott v. The Commonwealth, 8 Watts, 517; Genkinger v. The Commonwealth, 32 Pa. St., 99. Hence, the conviction here was without warrant of law, and no valid judgment can be pronounced thereon.

There must be an arrest of judgment; and it is so ordered.—*Pittsburgh Legal Journal.*

Libel.

A rather curious case of libel is Zier v. Hoflin, Minnesota Supreme Court, Jan. 3, 1885, 21 N. W. Rep., 862. The defendant caused to be inserted in a newspaper an advertisement, "Wanted, E. B. Z., M. D., to pay a drug bill," and some third person cut it out, pasted it on a postal card, and sent it to a young lady to whom plaintiff was affianced. *Held*, That a verdict for the plaintiff should be sustained. The court said: "We do not think the words published come under the third class in the classification given in Pratt v. Pioneer Press Co., 30 Minn., 41, *i. e.*, of words already defamatory on their face. For the only facts suggested by them standing alone, to wit, that the plaintiff owes a drug bill and that the creditor wishes him to pay, do not necessarily impute anything wrong to plaintiff. But words which may be innocent of themselves may be rendered libellous by the place and circumstances of their publication, for such place and circumstances may impress on them a meaning and suggestion which standing alone they do not have. Thus, though the words here do not, of themselves, impute wrong, they might be published in such a place or under such circumstances as to make them capable of naturally conveying the impression that plaintiff had been guilty of dishonest practices, either in contracting the debt or in withholding payment of it. And so they come under the second class mentioned in the case referred to, of words reasonably susceptible of a defamatory as well as of an innocent meaning. What meaning they would naturally convey was for the jury to determine, in view of the circumstances of their publication. In this respect the case is similar to Woodling v. Knickerbocker, 31 Minn., 268. . . . Although one who publishes a libel is not to be held responsible for an independent wrong done by a third person, though connected with the libel, he is responsible for the natural consequences of his own wrongful act, although the wrongful act of a third person may concur in bringing about such consequences. If it were a natural consequence of defendant's publication through the newspaper that some evil-disposed person should send a copy of the paper, or the item cut from the paper, to some one whom defendant had not thought of its reaching, he would be liable for it as the consequence of his own wrong. Townsh. Sland. & Lib., 158; Miller v. Butler, 6 Cush., 71. It was for the jury to say whether sending the postal card by a third person was a natural consequence of defendant's publication in the newspaper." In Woodling v. Knicker-

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bocker, *supra*, the libel consisted in a placard on a piece of furniture on a sidewalk in front of a store, inscribed, "taken back from W., who could not pay for it; to be sold at a bargain. Moral, beware of dead-beats."—*Albany Law Journal.*

United States Court of Claims

M. C. MEIGS *vs.* THE UNITED STATES.

1. A judgment of the Court of Claims, not appealed from, estops the parties from ever after controverting with each other, either there or in the Treasury Department, the same questions of law and fact which were put in issue, tried and determined in the case wherein such judgment is rendered.
2. The Court of Claims exercises all the functions of a court, and is one of those courts which Congress authorizes, having jurisdiction of cases of contracts between the government and its citizens. Its judgments, where no appeal is taken, are absolutely conclusive of the rights of the parties unless a new trial is granted; as much so as are the judgments of the Supreme Court.
3. The decisions of the Court of Claims are also guides to the executive officers of the government, and furnish precedents for the executive departments in all like cases.

Chief Justice RICHARDSON delivered the opinion of the court.

The claimant brings this action to recover ten dollars a day for his services from March 1, 1884, to January 31, 1885, as supervising engineer and architect for the erection of a building for the Pension Bureau of the Interior Department.

A former suit for like services for the four months immediately preceding the time covered by this action, was brought in this court by the present claimant against the present defendants, in which the defendants appeared, issue was joined, a trial had, and every question of law and fact on the merits controverted in this case was raised, considered and determined in that case. Judgment was entered in favor of the claimant. An appeal was first taken by the defendants, but was subsequently withdrawn and not prosecuted. The judgment was paid under an appropriation therefor by Congress. (19 C. Cls. R., 497. Act of July 7, 1884, Ch. 334, 23, Stat. L., 241.)

In our opinion the defendants are estopped from setting up, either here or in the Treasury Department, any defences against the claimant's demand for services as supervising engineer and architect of the Pension Bureau, which were raised, litigated and determined in the former action between the same parties. They have had their day in court, they have submitted their defences to a court of competent jurisdiction, and the issue has been decided against them. That issue is forever settled between the parties in all future litigation. Such is the well settled law in cases between citizens, as decided by the Supreme Court in elaborately considered cases. (Bliot v. Morgan, 7 Wall., 619; Cromwell v. County of Sac, 94 U. S., 351.)

The judgment of this court might have been reviewed by the Supreme Court had the Attorney-General so elected. But he abandoned an appeal at the request, it is understood, of both the Secretary of the Interior and the Secretary of the Treasury, and his action is the action of the defendant. (United States v. Babbitt, 104, U. S., 767.)

The accounting officers of the Treasury should have followed that decision in the future settlement of the claimant's accounts, because the United States are estopped from further controverting the issues adjudicated by the judgment of this court.

In Klein's Case (13 Wall., 128 & 7 Ct. C. R., 241), the Supreme Court held that the Court of Claims exercises all the functions of a court, and is one of those courts which Congress authorizes, having jurisdiction of contracts between the government and the citizens, from which appeal lies to the Supreme Court.

In O'Grady's Case (22 Wall., 641, and 10 Ct. Cls. R., 134) the Supreme Court said: "It is equally certain that the judgments of the Court of Claims, when no appeal is taken to this court, are, under existing laws, absolutely conclusive of the rights of the parties unless a new trial is granted." And again, in the same case, "The judgment of the Court of Claims, from which no appeal is taken, is just as conclusive under existing laws as the judgment of the Supreme Court, until it is set aside on a motion for a new trial."

Moreover, the decisions of the Court of Claims in general, not appealed from, are guides to the executive officers of the government, and furnish precedents for the executive departments in all like cases. It was with that view apparently, as stated in the preface to the first volume of the Court of Claims Reports, that Congress passed the act of March 17, 1866, ch. 10. (14 Stat. at L., 9), the third section of which, as is incorporated into the Revised Statutes, is as follows:

"Sec. 1057. . . . And at the end of every term of this court, he [the clerk of the Court of Claims,] shall transmit a copy of the decisions to the heads of departments, to the solicitors, the comptrollers, and the auditors of the Treasury; to the Commissioner of the

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General Land Office, and of Indian Affairs, to the chiefs of bureaus, and to other officers charged with the adjustment of claims against the United States."

By the act of June 25, 1868, ch. 71, §7 (15 Stat. at L., 75) Congress provided, as the same is incorporated into the Revised Statutes, as follows:

"Sec. 1063. Whenever any claim is made against any executive department, involving disputed facts or controverted questions of law, where the amount in controversy exceeds three thousand dollars, *or where the decision will affect a class of cases, or furnish a precedent for the future action of any executive department in the adjustment of a class of cases* without regard to the amount involved in the particular case, or where any authority, right, privilege or exemption is claimed or denied under the Constitution of the United States, the head of such department may cause such claim, with all the vouchers, papers, proofs and documents pertaining thereto, to be transmitted to the Court of Claims, and the same shall be there proceeded in as if originally commenced by the voluntary action of the claimant; and the Secretary of the Treasury may, upon the certificate of any auditor or comptroller of the Treasury, direct any account, matter or claim of the character, amount *or class described in this section*, to be transmitted with all the vouchers, papers, documents and proofs pertaining thereto, to the said court, for trial and adjudication."

In more recent legislation, the "Act to afford assistance and relief to Congress and the executive departments in the investigation of claims and demands against the government," (22 Stat. at L., 485,) commonly called the "Bowman Act," it is expressly provided that in every case from a department under that act, the court shall report its findings and opinion to the Department from which it was transmitted for its *guidance* and action.

So in the still later act of July 7, 1884, ch. 334 (23 Stat. at L., 257 & 19 C. Cls. R., xviii, Adams' Case 20 C. of Cls. R.,) Congress appropriated $182,432.82 conditionally for the payment of a large number of claims of a particular class against the United States, subject to the following provision:

Provided, That no part of the money appropriated in this paragraph shall be paid to any of the claimants until the Court of Claims shall have heard and determined all of the questions involved, and the liability of the United States Government therefor, *in at least one test case*, which case shall be preferred in the order of the docket of said court.

Thus the course of legislation unmistakably indicates the intention of Congress that the decisions of the Court of Claims shall be guides and precedents for the executive departments in all like cases.

The wisdom of such legislation and of the intention of Congress indicated thereby is manifest. Here all cases are tried upon issues joined by the parties; the court has the benefit of the arguments of counsel on both sides, the Attorney-General or his assistants appearing and defending the interests of the United States, and cases are heard and determined by a bench of five judges, three of whom must concur to the decision of any case. (R. S., § 1052. Act of June 23, 1874, ch. 468; 1 Supplement to R. S., 105). While in the Treasury Department claims are finally passed upon by a single person, the comptroller, without any defence made by the Attorney-General or other officer appearing for the United States, and generally without argument on either side. (See report and circular of Secretary Sherman printed in McClure's Case, 19 C. of Cls. R., 26,)

The judgment of the court is that the claimant recover the sum of $3,370, and it will be so entered of record.

Jurisdiction in Criminal Cases.

Where a fraud or a crime runs across the boundary of a state, where shall it be tried? This is a question that frequently arises in this country. It was recently passed upon in England in the case of Reg. v. Holmes, 32 Weekly Rep., 372. It there appeared that by a letter written and posted by the prisoner at Nottingham to the prosecutor in France, the prosecutor was fraudulently induced to send money to the prisoner at Nottingham. Lord Coleridge said: "If authority was needed, it appears from the case of Reg. v. Burdett, 4 B. & Ald., 95, that the pretense is complete when the letter is posted. Here it further appears that the money was also actually received in Nottingham. Thus both of the necessary ingredients of the offence have taken place within the jurisdiction." Mr. Justice Denman added that the case was governed by Reg. v. Cooke, 1 F. & F., 64: "In that case the money was actually paid over at Westminster, while it seems to have been held that the money was 'obtained' at Northampton, where the letter was written; so that this would be *a fortiori* case by comparison." See People v. Hall, 57 How. Pr., 342; Swan v. People, 13 Weekly Dig., 519.—*American Law Journal.*

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THE year 1885 finds no less than four English judges still actively pursuing their judicial labors after attaining the age of four score years. They are Vice Chancellor Bacon, who is in his eighty-seventh; Judge Petersdoff, in his eighty-fifth; Judge Hulton, in his eighty-third; and Judge Bayley, of the Westminister county court, also in his eighty-third year.

The Courts.

SUPREME COURT OF THE DISTRICT OF COLUMBIA
GENERAL TERM.

Feb. 16, 1885.

Keller v. Ashford. Decree below reversed.

In re W. M. Bryant, habeas corpus. Judgment below affirmed.

Alley v. Lyon. Decree below reversed. Opinion by Mr. Justice Mac Arthur.

Ketcham, v. Georgetown College. On hearing.

Feb 17, 1885.

Same. Argument concluded and cause submitted.

Feb. 18, 1885.

Herring v. District of Columbia. On hearing

Feb. 19, 1885.

Same. Argument concluded and cause submitted.

B. & P. R. R. Co. v. Same. On hearing.

Feb. 20, 1885.

Same. On hearing.

IN EQUITY.—New Suits.

Feb. 16, 1885.

9333. Daniel N. Driscoll v. Francis J. Hieberger. To enforce Mechanics' lien.

9334. Hugh Downey v. Margaret King et al For trustee to hold certain real estate. Com sol, N. Dumont.

9335. George F. Jacobs v John W. Post et al. To enforce judgment. Com sol, D. O'C. Callaghan.

9336. Andrew Jackson, adm'r, v. Woodbury Blair et al Discovery and acct. Com sols, Jones, Lines, Harris, Voorhees and Caldwell.

Feb. 17, 1885.

9337. Marcus J. Wright v. Edmund H. Cummings et al. Injunction. Com sol, John N Oliver.

9338. Henry Clarke v. Henry Hohman et al. Partition. Com sols, Hagner & Maddox.

Feb. 18, 1885.

9339. Edwin B. Garges v John H. Garges. Injunction. Com sol, H. B. Moulton.

Feb. 19, 1885.

9340 Henry Fetter v. Thomas J. Logan et al. For trustee to release trust on lot. Com sol. J. H. Saville.

9341. Frances E. Burns v Arthur P. Burns. For divorce. Com sols, Miller and Forrest.

CIRCUIT COURT.—New Suits at Law.

Feb. 11, 1885

25970. The Ohio Mutual Relief Association v. Nathan B. Clarke et al. Bond, $292. Piffs atty, H B. Moulton.

25971. William A Matthewson v. Lucy M. Dorsey. Acct., $439.46. Piffs atty, R. Coyle.

Feb 12, 1885.

25972. Wm. A. Tattle & Co. v. Moses Coleman Judg't of Justice Bundy, $65 41. Piffs attys, Birney & Birney.

25973 Sophia A Weiser v. Elenora Hayden et al Appeal

25974. Wm. O. Baldwin v Wm. Wanstall & Bro. Replevin Piffs atty, A. B Duvall

25975. Rezin W. Darby v Mattingly Bros. Judg't of Justice Buckey, $47.70. Piffs atty, J. B. Wilson

Feb. 16, 1885.

25976. Herman A. Seligson v. Arthur Lewis. Replevin. Piffs atty, T. F. Miller. Defts atty, J. A. Smith

25977. Kelly & Chamberlin v. Martha E. Evans. Acc't. $314.94. Piffs attys, Riddle, Davis & Padgett

Feb 17, 1885.

25978. The U. S., ex rel. Elias C Boudinot and the Cherokee Nation v. Wm. A. Phillips. Account, $22,500. Piffs attys, Pike and Jones.

25979. George Truesdell v, Lewis Reeves et al. Judgm't of Justice Hall, $61 95.

25980 Same v. James Tyest et al. Judgment of Justice Hall, $47.15.

25981. Richard B. Carpenter v. Stephen W. Dorsey, Account, $5,975. Piffs atty, J. J. Weed.

Feb 18, 1885

25982. Oliver M. Atwood v. Talton Latney et al. Bond, $6,290. Piffs atty, Greer and Hagner & Maddox.

25983. John Harrington v. Henry C. Burch. Appeal Defts atty, J. J. Johnson.

Feb 20, 1885

25,984 Joel J. Bailey & Co. v. T Isaacs & Bro Acct and Notes, $613.92. Piffs atty. Birney & Birney.

PROBATE COURT.—Justice Hagner.

Feb 18 1885.

Estate of Samuel Pumphrey; petition for appointment of Chastain C. Meade as administrator Order of publication to issue.

Estate of Sabra V Abell Petition of Charles R. Abell for letters testamentary filed and order of publication made returnable March 6

Estate Samuel Cook; Thomas D Bond, of Howard Co., Md, appointed administrator; bond, $1 000.

Augusta M. Weaver appointed guardian to the orphans of Charles Weaver, deceased; bond, $20,000.

Estate of Garrett B Davids Order granting letters of administration to Reginald Fendall on bond of $6 000.

Estate of John Voegler. Letters testamentary granted to Johannette Voegler; bond, $1,000.

Feb. 20, 1885.

Estate of Clark Mills; order authorizing executor to sell statue of Salmon P. Chase to Samuel Bensinger

Daniel Maloney appointed administrator on the estate of Ellen K Maloney.

Estate of Josiah Perry; letters testamentary granted to Mary Perry.

Estate of Elizabeth Fisher. Josephine Waldecker appointed executrix and guardian

Estate of James McGraw; certified copy of the findings of jury. Order setting probate of will aside.

Estate of James Torphy. Order of publication returnable March 20

Will of Edgar M Brandenburg filed.

Estate of John Feldman; Benjamin F. Rittenhouse appointed administrator; bond, $3,000.

Estate of Levi S. Thomas. Letters testamentary issued to Charlotte R. Thomas.

Legal Notices.

THIS IS TO GIVE NOTICE

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Garret B Davis. late of Baltimore, Md., deceased

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof. to the subscriber, on or before the 17th day of February next: they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of February, 1885.

REGINALD FENDALL,
Administrator.

8-3

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 20th day of February, 1885.

CHARLOTTE M. BAKER v. JNO R BROOKS ET AL. } No. 9329. Eq. Doc. 24.

On motion of the plaintiff, by Messrs. Appleby & Edmonston, her solicitors, it is ordered that the defendants, Hannah Brooks and William Kilgour, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER. Justice.

True copy Test: 8-3 R. J MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February 20th. 1885

In the matter of the Estate of James Torphy, late of the District of Columbia, deceased

Application for the Probate of the last Will and Testament and Letters of Administration, c t. a, on the estate of the said deceased, has this day been made by Benjamin F. Rittenhouse.

All persons interested are hereby notified to appear in this Court on Friday, the 20th day of March next at 11 o'clock a m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration, c t a. on the estate of the said deceased should not issue as prayed Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B HAGNER Justice.

Test: H. J. RAMSDELL, Register of Wills.

GORDON & GORDON, Solicitors. 8-3

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February 16, 1885.

In the case of Annie Tolman Smith, Executrix of Abby Noyes Condron, deceased, the Executrix aforesaid has, with the approval of the Court, appointed Friday the 13th day of March, A. D 1885, at 11 o'clock a. m, for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executrix will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test 8-3 H. J RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 17th day of February, 1885.

HUGH DOWNING ET UX
v.
MARGARET E KING, JAMES I KING, HUGH TUOHY, BRIDGET TUOHY and PATRICK LEONARD. } No 9334. Eq. Doc 24.

On motion of the plaintiffs, by Mr. N. Dumont, their solicitor, it is ordered that the defendants, Margaret E. King and Patrick Leonard, cause their appearance to be entered herein on or before the first rule day, occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy Test: 8-3 R J MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 19th day of February, 1885.

HENRY FETTER
v.
THOMAS J. LOGAN ET AL. } No. 9340. Eq. Doc.

On motion of the plaintiff, by Mr. Saville, his solicitor, it is ordered that the defendants, Thomas J Logan, George W. Linville, and John Galt, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A B. HAGNER, Justice.
A true copy Test: 8-3 R J MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February 14th, 1885

In the matter of the Will and Estate of James Barry, late of Washington City, District of Columbia, deceased.

Application for Letters of Administration, de bonis non, cum testamento annexo, on the estate of the said deceased has this day been made by Dayton S Ward.

All persons interested are hereby notified to appear in this court on Friday, the thirteenth day of March, next, at 11 o'clock a m., to show cause why Letters of Administration de bonis non c. t. a, on the estate of said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice
Test: 8-3 H. J. RAMSDELL, Register of Wills
WM. T. S. CURTIS. 23, 25 & 26, Kellog Building, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

MARGARET E. STODDART
v.
CATHARINE E BOOTH ET AL. } No. 8833. Eq Doc. 23.

George E. Hamilton, trustee appointed by a decree of this Court in the above entitled cause to sell the real estate in these proceedings mentioned, to wit: the north twenty-five (25) feet and six and one half (6½) inches, of lot 22, in square No. 37 by the depth of said lot, having reported to the Court that after complying with the requirements of said decree, he offered for sale at public auction the aforesaid property on the 19th day of January, A. D. 1885, and that John Firm, of the City of Washington, in the District of Columbia, became the purchaser thereof, at twenty-one cents per square foot, it is by the Court on this 3d day of February, A. D. 1885, ordered that said sale be, and the same is hereby ratified and confirmed unless cause to the contrary be shown on or before the 5th day of March, 1885.

Provided, a copy of this order be published in the Washington Law Reporter once a week for three weeks before the said 5th day of March, 1885.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 7-3 R. J. MEIGS, Clerk,

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

FRANKLIN P. SELZER ET AL.
v
GEORGE A. HASKE ET AL. } No. 8901. Eq. Doc. 24.

Upon consideration of the report of Charles A. Walter, trustee herein, and of the report of the Auditor filed herein on the 11th day of February, 1885, upon order of reference passed in this cause on the 14th day of January, 1885; and it appearing to the court that the defendant, Ruppert, has complied with the terms of sale as provided in said decree, by paying to the trustee in this cause the sum of $231. 27, as ascertained by said Auditor's report to be due by him under said decree, it is, therefore, by the Court, this 18th day of February, 1885, ordered that the sales to said Ruppert of part of lots 13 and 14 in square 762, beginning at the northwest corner of said lot 13, and thence running southwesterly along the western line of said lot, 132 feet 8 inches, thence south 18 feet, thence east 36 feet 7 inches, thence north 26 feet 10 inches, thence east 4 feet 6½ inches, thence north 21 feet 5½ inches, thence east 1 foot 10 inches, thence northeastwardly to a point 30 feet 6 inches, from Pennsylvania Avenue on a line drawn parallel with and 16 feet from the western line aforesaid, thence along said line to said Avenue, and thence along said Avenue 16 feet to the place of beginning; and part of lot 6 in square 534 beginning at a point on the line of a 15 foot alley in said square, 113 feet 5½ inches from the southeast corner of said lot, and running thence west 24 feet 8½ inches thence north 113 feet feet 5½ inches, to a thirty foot alley in the rear of said lot, thence east on the line of said alley 24 feet 8½ inches to said 15 foot alley, thence south on the line of said alley 113 feet 5½ inches to the place of beginning, to be, and the same are hereby ratified and confirmed, unless cause to the contrary be shown on or before the 18th day of March, 1885:

A B HAGNER, Justice.
A true copy. Test: 8-3 R J. MEIGS. Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of administration on the personal estate of Samuel Cook, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 13th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of February, 1885.

THOMAS D. BOND, Adm'r,
JUDSON CULL, Solicitor. 7-3 125 Pa. Ave., N. W.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, February 13th, 1885

In the case of John W. Ross, Administrator of the estate of Mary Maroney, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 6th day of March, A. D. 1885, at 11 o'clock a. m, for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test 7-3 H J RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 20th day of February, 1884.

HENRY CLARKE ET UX,
Complainants,
v
HENRY HOHMAN ET AL.,
Defendants } No. 9338. Eq. Doc. 24.

On motion of the plaintiffs, by Messrs. Hagner & Maddox, their solicitors, it is ordered that the defendants, Henry Hohman, and Louise Hohman, his wife, Amelia H Perry, widow of Anson G Perry; Leonard Perry, Rachel Rynders, sometimes called Rachel Reynolds, and William Rynders, her husband, Annetta Rynders, sometimes called Annetta Reynolds, and Hiram Rynders, her husband, Elizabeth A. Lent, and Benoni S Lent, her husband, Elizabeth Atwell, and John Atwell, her husband, and Rossetta Hibbard, defendants, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 8-3 R. J. MEIGS, Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 12th day of February, 1885.

ZECHARIAH CHAFEE, trustee, v. WILLIAM S. HOYT ET AL. } No. 9175. Eq. Doc. 24.

On motion of the plaintiff, by Mr J. J. Darlington, his solicitor, it is ordered that the defendants Wm. S. Hoyt, Edwin Hoyt, jr., Chas. G. Francklyn and Susan S. Francklyn, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice, &c.
A true copy. Test: 7-3 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February 10, 1885.

In the matter of the Estate of Jane Duncan, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Mary Marks.

All persons interested are hereby notified to appear in this court on Friday, the 6th day of March, next, at 11 o'clock a. m., to show cause why the said Letters of Administration, on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: H. J. RAMSDELL, Register of Wills.
WILLIAM T. BAILEY, Solicitor. 7-3

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business. February 10, 1885

In the matter of the Estate of Joseph W. McCorkle, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased, has this day been made by James P Hambleton, a creditor.

All persons interested are hereby notified to appear in this Court on Friday, the 6th day of March next, at 11 o'clock, a. m., to show cause why Lettrs of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: H. J. RAMSDELL, Register of Wills.
ISAAC H. FORD and JOHN N. OLIVER, Solicitors 7-3

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February 13, 1885.

In the matter of the Estate of Sabra P. Abell, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Charles R. Abell

All persons interested are hereby notified to appear in this court on Friday, the 6th day of March, next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admittled to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

By the Court. A. B. HAGNER, Justice.
Test: 7-3 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business February 13, 1885

In the case of James L. Barbour, Administrator of Bridget M Fitzmorris, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 13th day of March, A. D. 1885, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 7 H. J. RAMSDELL Register of Wills

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration, on the personal estate of Margaret Waters, late of the District of Columbia dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of January, 1885.

7-3 COLLINS CRUSOR.
GORDON & GORDON, Solicitors. Administrator.

THIS IS TO GIVE NOTICE,

That the subscriber, of Washington City, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Samuel M. Barker, late of the District of Columbia, dec'd

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of December, 1884.

WILLIAM M BARKER, Administrator
R W. MCPHERSON, Solicitor. 6-3

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 29h day of January, 1885.

MARK W. SAMUEL Complainant v. BRAINARD H. WARNER ET AL. Defendants } No 9281. Eq. Doc 24.

On motion of the complainant, by Mr. E H. Thomas, his solicitor, it is ordered that the defendant, Arnold Tawzer, cause his appearance to be entered herein on or before the first rule day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice
True copy. Test: 6-3 R J. MEIGS, Clerk

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February, 6, 1885.

In the matter of the Estate of John B. Randolph, late of the United States Navy, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by John B. Randolph.

All persons interested are hereby notified to appear in this court on Friday, the 27th day of February next, at 11 o'clock, a. m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. ALEXANDER B. HAGNER, Justice.
Test 6 H. J. RAMSDELL, Register of Wills

THIS IS TO GIVE NOTICE

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Catharine Robinson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of February next; they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 10th day of February, 1885.

ALBERT F. FOX
H. B. MOULTON, Solicitor. 7-3 Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 12th day of February, 1885.

ZECHARIAH CHAFEE, trustee, v. SAMUEL BLATCHFORD ET AL. } No. 9174. Eq. Doc. 24.

On motion of the plaintiff, by Mr. J. J. Darlington, his solicitor, it is ordered that the defendant, Burr W. Griswold, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 7-3 R. J. MEIGS, Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 27th day of January, 1885.

THOMAS J FISHER
vs.
JOHN R TUCKER ET AL., Heirs of Thomas Tudor Tucker. } Equity. No. 9305.

On motion of the plaintiff, by Hillyer & Ralston, his solicitors, it is ordered that the defendants, H. Tudor Tucker Fanny Bland Graham, J. R. Graham, Mary T Magill, Evelina Powell, W. L Powell, Virginia Edwards, John E. Edwards, Elizabeth Dallas Tucker, Virginia B Tucker, Dallas Tucker, Hattie A Tucker, Cassie D Brown, John Thompson Brown, John R. Tucker, Emma B. Tucker, Evelina T. Lucas, D. B Lucas, Nannie S. McLaughlin, I. Fairfax McLaughlin, St. George Tucker Brooke, Mary B. Brooke, Frank J. Brooke, Gay Bentley Brooke, D. Tucker Brooke, Lucy Higgins Brooke, Henry L. Brooke, Elizabeth D. Brooke, Laura Beverly Bedinger, Everett W Bedinger, Elizabeth Gilmer Tucker, Walker Gilmer Tucker, Lizzie Edwards Tucker, Evelina Tucker, Lucy Richardson, Robert B Richardson, Annie Tyler, Lyon G. Tyler, Eliza Taylor Tucker, Alfred B Tucker, Cynthia B T. Coleman, Charles W. Coleman, B. St. George Tucker, Eliza C. Tucker, Fannie B. B. T. Taliaferro, Julia Clark Tucker, Nathaniel Beverly Tucker, Wm. Francis Peyton Tucker, John R. Bryan Delia Page, John R. Page, Fannie Carmichael, S W. Carmichael, Georgia B. Grinnan, A. G. Grinnan, John R Bryan, Jr., Margaret R. Bryan, St. George Tucker C Bryan, Joseph Bryan, Isabel S. Bryan, C. B Bryan, Mary S. C Bryan, Fannie Bland Brown, H. Peronneau Brown, Virginia C. Braxton, St George Tucker Coalter, Ada B Lewis Tucker, Virginia Tucker, Virginia Lewis Tucker, Francis M Tucker, Mary Thornton Tucker, and Nathaniel Beverly Tucker, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day, otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Asso. Justice.
A true copy. Test: 5 R J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Catharine Robinson, late of the District of Columbia, dec'd

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of January, 1885.
MICHAEL BOYLAND, Administrator.
H. B. MOULTON, Solicitor. 5-3

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 30, 1885.

In the matter of the Will of Frances A. Lockwood, late of the District of Columbia, deceased

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Margaret M. Lockwood.

All persons interested are hereby notified to appear in this court on Friday, the 27th day of February next, at 11 o'clock a m., to show cause why the said Will should not be proved and admitted to probate and Letters Testamentary on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B HAGNER, Justice.
Test: 5-3 H. J. RAMSDELL, Register of Wills.
HENRY M BAKER, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 27th day of January, 1885.

FREDERICK H. PAINE
v.
ELIZABETH M BURNETT, GEORGE H BURNETT ET AL. } No. 9307.

On motion of the plaintiff, by Mr. Woodbury Blair, his solicitor, it is ordered that the defendants, Elizabeth M. Burnett, George H. Burnett, Alexander M. Burch and wife, Ellen Burch Brodnax and John Brodnax, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER Justice.
A true copy. Test: 5-3 R. J. MEIGS, Clerk

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 30, 1885.

In the matter of the Estate of Mary Shannon, late of the District of Columbia, deceased

Application for Letters of Administration on the estate of the said deceased has this day been made by James Fullerton.

All persons interested are hereby notified to appear in this court on Friday, the 27th day of February next, at 11 o'clock a. m., to show show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B. HAGNER. Justice.
Test 5-3 H. J. RAMSDELL. Register of Wills.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John Casey, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of January, 1885.
5-3 SAMUEL BIEBER,
LEON TOBRINER. Solicitor. Administrator.

THIS IS TO GIVE NOTICE.

That the subscriber of Washington City, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration d b. n., on the personal estate of William Martin, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of January, 1885.
5 CHARLOTTE A. MARTIN.
EDWARDS & BARNARD, Sol'rs. Adm'x de bonis non.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Archibald C Spalding late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of January, 1885.
5-3 LUCY SPALDING, Ex'x.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Special Term for Orphans' Court Business.

In re estate of Samuel Pumphrey, deceased.

On consideration of the petition of Elizabeth A. Pumphrey, Nellie F Pumphrey and Annie L. Pumphrey, praying the appointment of Chastain C. Meador as administrator of above decedent, it is by the Court this 13th day of February, 1885, ordered that the prayer of said petition be granted, unless cause to the contrary be shown on or before Friday, the 6th day of March, 1885 Provided a copy of this order be published in the Washington Law Reporter three times before said last mentioned date.

A. B. HAGNER.
A true copy. Test; H. J. RAMSDELL,
Feb. 13th, A. D. 1885. 7-4 Register of Wills, D. C.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Jane Rutledge, late of Niles, Michigan, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of February, 1885.
CHARLES A. CHAPIN,
7-3 Adm'r 1331 F St. N. W.
JAS. R. COOK and N. DUMONT, Rooms 3 and 4. 1331 F St. N. W.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, February 6, 1885.

In the case of Francis M. Lazenby, Administrator of Thomas A. Lazenby, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 13th day of March A. D. 1885, at 11 o'clock a m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 6 H. J. RAMSDELL, Register of Wills.

JOSEPH J. WATERS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 30, 1885.

In the case of Luthur Martin the deceased adm'r of William Martin, deceased. James S. Edwards, the administrator w. a., of the said Luther Martin, has, with the approval of the Court, appointed Friday, the 6th day of March, A. D. 1885 at 11 o'clock a. m, for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Administrator w. a. will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

Test: 6 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Holding a Special Term for Orphans' Court Business. February 2nd, 1885.

In the case of James Biggins, Executor of Patrick Hanaphy, deceased, the Executor aforesoid has, with the approval of the court, appointed Friday, the 27th day of February A. D. 1885, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them; Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 6 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business. January 30, 1885.

In the matter of the Estate of Caroline Elizabeth Van Newkirk, late of the City of Washington, District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased, has this day been made by Benjamin F. Evans, of the City of Washington.

All persons interested are hereby notified to appear in this Court on Monday the 2nd day of March next at 12 o'clock, m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be publised once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B HAGNER, Justice.

Test: H. J. RAMSDELL, Register of Wills.

E. B. HAY, Solicitor. 5-3

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration d. b n., c. t. a, on the personal estate of Elijah W. Hager, late of Onondaga, N. Y., dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of January, 1885

5-3 JOHN TRIMBLE,

HAGNER & MADDOX, Sol'rs. Administrator d.b.n.,c.t.a.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Joseph D. Harris, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of January, 1885.

ELIZABETH W. HARRIS, Executrix.

R. F. LEIGHTON, Solicitor. 5-3

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, January 30, 1885.

In the case of Frank D Orme and John A. Hamilton, Executors of Jane E. Haswell, dec'd, the Executors aforesaid have, with the approval of the court, appointed Friday, the 27th day of February, A D. 1885, at 11 o'clock a. m, for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

Test: 5 H J RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 27th day of January, 1885.

WILLIAM SHARON vs. JOHN R TUCKER ET AL., Heirs of Thomas Tudor Tucker. } Equity. No. 9304.

On motion of the plaintiff, by Hillyer & Ralston, his solicitors, it is ordered that the defendants, H Tudor Tucker Fanny Bland Graham, J. R. Graham, Mary T Magill, Evelina Powell, W. L Powell, Virginia Edwards, John E. Edwards, Elizabeth Dallas Tucker, Virginia B Tucker, Dallas Tucker, Hattie A. Tucker, Cassie D Brown, John Thompson Brown, John R. Tucker, Emma B. Tucker, Evelina T, Lucas, D. B Lucas, Nannie S. McLaughlin, I. Fairfax McLaughlin, St. George Tucker Brooke, Mary B. Brooke, Frank J. Brooke, Gay Bentley Brooke, D. Tucker Brooke, Lucy Higgins Brooke, Henry L Brooke, Elizabeth D. Brooke, Laura Beverly Bedinger, Everett W Bedinger, Elizabeth Gilmer Tucker, Walker Gilmer Tucker, Lizzie Edwards Tucker, Evelina Tucker, Lucy Richardson, Robert B Richardson, Annie Tyler, Lyon G. Tyler, Eliza Taylor Tucker, Alfred B Tucker, Cynthia B T. Coleman, Charles W. Coleman, B. St George Tucker, Eliza C. Tucker, Fannie B. B. T. Taliaferro, Julia Clark Tucker, Nathaniel Beverly Tucker, Wm. Francis Peyton Tucker, John R. Bryan Delia Page, John R Page, Fannie Carmichael, S W. Carmichael, Georgia B. Grinnan, A. G. Grinnan, John R Bryan, Jr., Margaret R. Bryan, St. George Tucker C Bryan, Joseph Bryan, Isabel S Bryan, C. B. Bryan, Mary S. C Bryan, Fannie Bland Brown, H. Peronneau Brown, Virginia C Brexton, St George Tucker Coalter, Ada B Lewis Tucker, Virginia Tucker, Virginia Lewis Tucker, Francis M Tucker, Mary Thornton Tucker, and Nathaniel Beverly Tucker, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day, otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Asso. Justice.

A true copy. Test: 5 R J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Holding a Special Term for Orphans Court Business. January 30th, 1885.

In the case of Ira W. Hopkins, administrator of Thomas Riggles, deceased, the Adm'r aforesaid has, with the approval of the court, appointed Friday, the 20th day of February, A. D. 1885, at 11 o'clock a m for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized; with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 5-3 H. J. RAMSDELL, Register of Wills.

GEO. W. SALTER, Solicitor.

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Washington Law Reporter

WASHINGTON - - - - - - February 28, 1885.

GEORGE B. CORKHILL - - - EDITOR

We have received the first number of the *Kansas Law Journal*, a very neat and newsy little paper, published by Geo. W. Crane & Co., Topeka, Kansas, and of which S. L. Seabrook is the editor. Its professed object is to keep the bar of Kansas and adjoining States informed on all questions affecting the law of the State; to bring members of the bar in close relationship with each other; to discuss questions relating to law reform and such measures before the Legislature as will advance the operation of justice in the administration of law, &c. If the succeeding numbers are as well stocked with interesting and important matter as the first, we see no reason why it should not prove successful in a high degree, and we extend our kind wishes for its future welfare.

The case of Edward Friend et al. v. Samuel Michaelis et al., N. Y. City Court, General Term (N. Y. D. R., Vol. 27, No. 42), decides that where the defendants made a general assignment for the benefit of their creditors and conveyed their firm property for the payment of their firm and individual debts, without providing that the firm debts should be first paid, and also conveyed their individual property for the payment of firm and individual debts, without providing that individual debts should be first paid, and conveyed their respective individual property for payment of individual debts of the other party, without first requiring the firm debts and their own individual debts to be paid thereout, such an assignment of property furnishes no valid ground for an attachment as being made with an intent to defraud creditors; and it also distinguishes actual and constructive fraud, and considers the case of Milliken v. Dart, 26 Hun, 24.

A promise to marry is a contract, for the violation of which an action lies, which is not barred by the prescription applicable to torts, but only by that applicable to suits *ex contractu*. The woman who sues cannot cumulate with her main action a demand for the recognition of the defendant as father of her child. Seduction may be shown to increase damages. Minority of defendant cannot be suggested for the first time in the appellate court. Justification must be specially pleaded to entitle defendant to prove lewd or unchaste habits of plaintiff, which cannot be shown under the general issue. Smith v. Braun; S. C. Pa., Jan. 19, 1885.

In Philadelphia, etc., R. Co. v. Hoeflick, Maryland Court of App., Oct., 1884, 18 Rep., 822, it is held that the fare of a child in charge of a passenger on a railroad train is properly chargeable to the passenger, and if the latter refused to pay it, both may be ejected from the train, though the passenger had paid his own fare.

The case of Reed v. Radigan, Supreme Court of Ohio (C. L. J., Vol. 20, No. 7), decides that where the judgment debtor pays the judgment in full, after a sale of his lands by the sheriff to satisfy it, it is error in the court thereafter to confirm such sale against the objection of the debtor.

Jury Trials.

In discussing our jury system in America, we have been satisfied with looking at the changes made by England, forgetting that other countries have jury trials which as a whole would not be safe to copy, yet having something in them worthy of serious thought and study; that their jury systems are inferior to ours should not deter us from their examination.

There are certain problems only time is able to solve among them. Unanimity of juries. The right of the judge to charge the jury. When the jury ought to be discharged. How these problems among others can be worked out is a question. An approach to the solution of these questions may be accomplished by examining the means resorted to by others in grappling with them.

Among the countries on the continent

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of Europe, where trial by jury has become a part of their criminal procedure, France is the most prominent. Trial by jury in France for criminal offences owes its formation and establishment to the revolution of 1789. Before that time, criminal charges were tried by judges, and were then made an engine of horrid cruelty and injustice.

The jury became a part of the criminal courts of France by a law passed by the French Constituent Assembly, September 16th, 1791. These criminal courts are called Courts of Assize. The institution of trial by jury is confined exclusively to these courts; the crimes triable by them are those involving sentences of death or penal servitude, political offences, manslaughter by duelling, and offences against the press law. These courts are held four times in a year, and are composed of three judges, one of whom officiates as the president of the court and another as clerk, the jury being a component part of these courts with its usual number of twelve. None but those in the enjoyment of full political and civil rights can discharge the office of juror. Each must be thirty years of age and over; there is no limit above that age, although persons over seventy are excused if they so desire. The liability to serve as a juryman is treated in France as a privilege or a right conferred. It imparts a sense of dignity and power to exercise the funtions hitherto confined to judges; the office is thus felt to be a distinction and an honor. Thirty-six men of the necessary qualification are selected by the president of the court to form the jury list for the session, and four extra jurymen are summoned besides the thirty-six; these compose the sessional list to attend the formation of the panel. Defaulting jurymen are heavily fined if they cannot offer a valid excuse for their absence. The list is furnished the prisoner the day before his arraignment, or the day of trial. From this list the panel is taken. Before the sitting of the court, the panel to try the prisoner is struck in the presence of the president of the assize, the clerk, the public prosecutor, the accused, and his counsel. The names are placed in an urn; an equal number of challenges, that is, twelve, is allowed to the prisoner and public prosecutor, but there must be twelve names left in the urn unchallenged. As soon as the right of challenge has been exhausted, or twelve names have been drawn without objection, the panel is complete. In case the trial is likely to be a long one, the president may order the addition of two more jurymen, who must be present during the whole of the trial, to fill up any vacancies that may occur. The jurors and substitutes are sworn separately by the president of the court. The public prosecutor opens the case. The prisoner and witnesses are examined by the president of the court. The public prosecutor and the jury may interrogate by leave of the president; but the accused or his counsel can only interrogate through the presiding officer. The proceedings are ended by the prisoner or his counsel having the closing argument. Prior to 1881, the president was required to sum up the evidence, but this proceeding was abolished by a law of June 19, 1881. Questions in writing are submitted to the jury to be answered in the affirmative or negative. The jury are never detained throughout the whole duration of a trial, not even in capital offences, but are allowed to separate during adjournments. During the deliberations of the jury in their room, the president is allowed to be present when requested by the jury. The jury are not permitted to leave the jury room until they have rendered a decision. The mode of voting in coming to the conclusion as to verdict is regulated by the law of May, 1830. Slips of paper are given to the jurors, on which they severally write the result without informing their colleagues. From these slips the foreman writes the result and then burns the slips; when there is a majority of only one for conviction, he states it. The foreman is either chosen by the jurors among themselves, or he is the first on the list, and acts as foreman on that account. The jury vote by secret ballot; the verdict of the majority is taken; if they are equally divided, the prisoner is entitled to acquittal. Since the year 1831 a majority of two-thirds is required to render a verdict of conviction. By the law of September 4th, 1798 (18 Fructidor, An. VI), it was enacted that no verdict that was not unani-

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Husband and Wife.

Supreme Court New York.—General Term.

HENRY BRAM, Respondent,

vs.

GEORGE ADAM BRAM and CLARA BRAM, Appellants.

1. A husband and wife held real property by a joint deed to the two. The wife gave a deed for one-half of said property to A, and subsequently joined her husband in a conveyance of the whole to B, who gave a mortgage to secure the purchase price, which mortgage they assigned to plaintiff. In this action to foreclose the mortgage.

Held, That as the statutes enacted for the benefit of married women have not abrogated or changed the principle of common law as to the unity of husband and wife, both husband and wife were in this case seized of the entirety and neither could sell without the consent of the other; therefore the deed executed by the wife alone did not convey any present interest in the property, and the mortgage in which both joined conveyed the title to plaintiff, who is entitled to judgment in his favor.

2. Plaintiff is not bound by a judgment obtained by B, as owner of a one-half interest, for a partition of the property, he not being a party to that action, and it was not necessary to join B as defendant in this action.

Appeal from a judgment recovered on trial at the Special Term.

DANIELS, J.—The judgment recovered in the action was for the foreclosure of a mortgage and the sale of mortgaged property. The mortgage was given for the purchase price of the property described in it. It had been conveyed to and was owned by Jacob Bram and Babeta Bram, who were husband and wife, and they executed and delivered a full covenant warranty deed of the property on the 30th day of September, 1881, to George Adam Bram, and he, to secure the purchase price, at the same time executed and delivered to them the mortgage in suit, and they thereupon assigned it to the plaintiff. It has been urged in support of the appeal that the mortgage was given to secure the purchase price of property sold in violation of the terms of the statute forbidding any person to sell any pretended right or title to lands or tenements of which the grantor has not been in possession for the space of one year before the grant, but no evidence whatever is contained in the case which would render it subject to the control of this statutory provision. The facts, on the contrary, indicate that the grantors in the deed were in the actual possession of the property, and that such possession had been enjoyed by the grantee since it was executed and delivered to him. It was proved on behalf of the defendants that Babeta Bram, one of the grantors in the deed to George Adam Bram, on the 23d of September, 1881, executed and delivered to William Zorntlien a deed for one-half the property afterwards conveyed to George Adam Bram. And for that reason it has been objected that the consideration for the mortgage had in part failed, as the entire property was intended to be conveyed by the terms of the deed executed and delivered to him. But as this deed was executed by the wife alone, whose interest in the property was created by a joint deed to herself and her husband, it was inoperative in the way of conveying any present interest whatever to the grantee named in it.

Where a deed is executed and delivered to a husband and wife, as this deed to them was, the husband, by virtue of his marital rights, becomes entitled to the possession of the property during his life, and that possessory right he may dispose of by deed, but subject to that qualification. As neither the husband nor wife is severally seized of any interest in the property, each is incapable by means of his or her sole deed to convey any present right or interest in the property to his or her grantee.

Both are required to join in the conveyance, otherwise it can have no effect unless it may be by way of estoppel in case the grantor shall prove to be the survivor of the two. The rule upon this subject is that "they are both seized of the entirety, and can neither sell without the consent of the other, and the survivor takes the whole. This species of tenancy arises from the unity of husband and wife, and it applies to an estate in fee or for life" (2 Kent's Commentaries, 7th ed., 110). Jackson v. Stevens (16 John., 110), where the rule was stated to be "well settled that if an estate be given to a man and his wife they take neither as joint tenants nor as tenants in common, for being considered as one person in law, they would not take by moieties, but both are seized of the whole. The consequence of which is that neither of them can dispose of any part without the assent of the other, but the whole goes to the survivor (Id., 115). And it has since been sustained by the following additional authorities: Doe v. Howland, 8 Conn., 277, 283; Barber v. Harris, 15 Wend., 616, 618; Jackson v. McConnell, 19 Wend., 175; Farmers & Mechanics' Bank v. Gregory, 49 Barb., 155, 162; 1 Washburn on Real Estate, 4th ed., 332, sec. 9, 672-3. And as this deed from Babeta Bram to William Zorntlien conveyed no interest whatever in the property to him it followed that the conveyance, in which both the hus

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band and wife joined to the mortgagor, conveyed the title to the property to him, under which he became seized of it and entitled to its full and complete enjoyment, subject only to the contingency that the wife shall survive her husband. This contingency would, of course, diminish the value of the property, but to what extent that might be the result was not proved nor attempted to be proved by any evidence in the case, and no ground, therefore, was presented for making any deduction from the amount of the mortgage on account of this contingency. It did appear, however, that Zorntlien, after the execution and delivery of the deed executed by Babeta Bram to him, brought an action in the superior court for the partition of the property, upon the allegation that he had become the owner of an undivided half interest in it by virtue of the deed to him. The action was sustained and a judgment to that effect recovered in it, and on appeal this judgment was affirmed. This probably proceeded upon the effect of the case of Meeker v. Wright (76 N. Y., 262), where a very decided opinion was expressed that a deed executed to a husband and wife made them tenants in common of the property affected by it. But the point was not definitely then decided by the court. It was afterwards directly presented for consideration in Bertles v. Nunan (92 N. Y., 152), where it was held that the statutes enacted for the benefit of married women had not abrogated or changed the principle of common law and the opinion expressed in the preceding case was overruled. This decision was made in the year 1883 and the former in 1879. And it was during this intermediate period that the action was prosecuted and terminated in the final judgment in the superior court. And it was probably deemed to be authorized by the opinion expressed in the case previously decided by the court of appeals. The plaintiff was not made a party to that action, and he was therefore not bound by that judgment; neither can his interest in the property as the assignee of the mortgage be in any form affected by it. He is entitled to have that interest maintained as the law secured it to the mortgagor at the time when the mortgage was executed and delivered; and he was correctly allowed to enforce his mortgage by sale of the mortgaged property by the judgment from which the appeal has been taken. A further objection was taken that Zorntlien should be made a party to the action for the foreclosure of the mortgage. But as the deed under which he claimed the undivided half was delivered to him before the mortgage itself was executed he could not be made a party to the foreclosure suit to determine his right or exclude him from the claim under the deed in the property, for only such persons are required to be parties to a foreclosure suit as have acquired rights or interests, or claim to have done so subsequently to the execution and delivery of the mortgage (Emigrants' Industrial Savings Bank v. Goldman, 75 N. Y., 127, 131). If he had any interest under his deed his right could not be considered or determined in this action. If he had none, then nothing remained to be tried, so far as he might be concerned. In neither view could he have regularly be joined as a defendant in the suit. The execution of the mortgage and the face that it became due and payable, together with the sum owing, were not denied, but admitted by the defendant's answer. That settled the plaintiff's right as assignee of the mortgage conclusively in this case. These facts were not in dispute, and it was not necessary therefore that a statement should be made of them in the decision of the court. They were not facts proved by evidence, but admitted by the pleadings and entirely beyond dispute; and they were so considered in the judgment which was entered, for that definitely adjudged and determined the amount due upon the mortgage and it was admitted by the defendants in their answer.

There was no error in the ruling of the court by which the witness was prevented from answering the question whether his father asked for any mortgage. It was an immaterial inquiry which, if answered, could have had no bearing upon any portion of the case. It did not follow from the ruling excluding the answer to it that the defendants were prevented from proving the consideration of the mortgage. The question did not suggest in even the remotest manner the object on the part of the defendants to be to give such proof. Neither did they offer any evidence tending to establish that fact. If that had been the design it should have been so stated to the court, for there was nothing from which it could be by possibility suspected from the question not permitted to be answered. At the opening of the case the defendants claimed the affirmative of the issue, as their answer had admitted all the material allegations contained in the plaintiff's complaint. This was denied by the court, and they excepted to the decision denying their application. Whether the rule which has been applied in the trial of causes before juries should be held to be applicable to a foreclosure suit tried before court, it is not necessary now to determine. For as there

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was no defence in any form made out by the proof the right to open and close the case was one of no possible importance. Upon the facts as they were stated, the plaintiff was entitled to recover the judgment entered in his favor. There could be no controversy on this subject, and the denial of the right to open and close the case in no way prejudiced him in the least degree.

All the facts necessary for the determination of the action which were not admitted by the answer, and even many of those which were, were found and stated by the court. There was no material deficiency in any respect, and the additional findings proposed by the defendants were not important for the consideration of any point arising upon the facts proved in the action. No error intervened in the trial on the disposition of the case which was prejudicial in any respect to the defendants, and the judgment should be affirmed.—*N. Y. Daily Register.*

Supreme Court, Washington Territory.

WINEBURGH ET AL. *vs.* SCHAER.

Filed September 24, 1884.

Chattel Mortgage on Stock in Trade; Retention of Possession and Rights to Sell by Mortgagor.—A chattel mortgage upon a stock of goods in trade, which permits the mortgagor to remain in possession of the property and dispose of the same by sale in due course of trade at his discretion, until the maturity of the debt purporting to be secured by it, is fraudulent and void as to other creditors of the mortgagor, without reference to the *bona fides* of the parties. This rule has not been changed by the statute of this territory providing for the registration of chattel mortgages, and for an affidavit to accompany the mortgage in which the mortgagor shall declare that the mortgage is made in good faith, etc., nor by the law making it a penal offence to sell or remove mortgaged property without the consent of the mortgagee.

Error to the district court of the second judicial district. The opinion states the facts.

TURNER, A. J.: This action was commenced in the district court of the second judicial district, holding terms at Yakima city.

The defendant in error filed his complaint in the court below for the foreclosure of a chattel mortgage upon a certain stock of goods, wares and merchandise, making John Schaer, the mortgagor, E. Wineburgh, attaching creditor of the mortgagor, and J. J. Tyler, sheriff of Yakima county, who served the attachment, defendants. The answer of E. Wineburgh admitted the taking on attachment by the sheriff, at his suit, of a portion of the stock of goods in question. For a further defence, the answer set up that the mortgagor, John Schaer, at the time of the execution of said mortgage and continuously thereafter, and until the attachment by the plaintiff in error, was a general merchant, doing business at Yakima city, and was at the time he executed said mortgage and continuously until said attachment, and that he retained possession of said mortgaged stock of goods, all of which the defendants in error well knew. That the stock of goods continued in his possession, and that he was allowed to sell the same with the knowledge and consent of the defendant in error, and to apply the proceeds to his own use and benefit in the ordinary course of his business. That the plaintiff in error, E. Wineburgh, caused the attachment to issue on an indebtedness against the said John Schaer, contracted prior to the said mortgage, for nine hundred and twenty and fifty-one hundredths dollars, the same being the balance of an account for goods, wares and merchandise sold by plaintiff in error, to said John Schaer. To this answer the defendant in error interposed a general demurrer, which was sustained by the court, and plaintiff in error, electing to stand upon his demurrer, judgment was rendered against him. He brings the case to this court by appeal. The only question presented for decision is as to the sufficiency of the answer of the plaintiff in error. If said answer constitutes a good defence, then the lien of the attachment, which it was the object of the defendant in error to have declared junior to the lien of his mortgage, must prevail and defeat the mortgage. The question as to whether a mortgage of chattels, such as a stock of goods, is fraudulent *per se*, in cases where the mortgagor retains the possession with power to sell and dispose of the goods in the course of his business, has been much considered and variously decided by the courts of this country. The cases upon each side of the question were called to the attention of the court in the argument of the case at bar, and the reasons upon which they proceeded, and the force and effect which should be given to them upon principle, was ably discussed and illustrated by counsel upon both sides. If we were at liberty to do so, it would be profitable to take up these cases, and attempt to extract from them the rule upon the subject that seems to be most consonant with sound reason. We are stopped on the threshold of the investigation, however, by an authority of such weight, that it would have great force with the court of any State where the question was still an open one, and that, as to this court, is binding and authoritative. We refer to the decision of the Supreme Court of the United States, in the case of Robinson v. Elliott, 22 Wall., 513.

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It was decided in that case by the unanimous voice of the full bench, that a chattel mortgage upon a stock of goods in trade, which permits the mortgagor to remain in possession of the property, and in its disposition by sale in due course of trade at his discretion, until the maturity of the debt purporting to be secured by it, is fraudulent and void as to other creditors, without reference to the *bona fides* of the parties. We gather from the opinion, however, that the court strongly doubted if the mortgage would be invalid in case the money derived from the sale of the mortgaged property was applied, and was understood to be applied to the extinction, in whole or in part, of the mortgage debt.

This authority must govern us in the decision of this case. It is insisted, however, by the counsel for the defendants in error, that the laws of the territory providing for the registration of chattel mortgages, and for an affidavit of the mortgagor to accompany the mortgage, in which he shall declare that the mortgage is made in good faith, etc., and the law making it a penal offence to sell or remove mortgaged property without the consent of the mortgagee, have changed, by necessary implication, the rule of the common law on the subject. We think not. Similar provisions, and in some respects stronger provisions, in the laws of Indiana, were urged upon the court in Robinson v. Elliott, as a virtual abrogation of the common law rule in that State, but the court refused to so consider them. The statutes referred to provided for the registration of chattel mortgages, and declared "that the question of fraudulent intent in all cases shall be deemed a question of fact." There is nothing in the statutes of this territory affording so strong an implication in favor of the position contended for as the language of the Indiana statute which we have quoted. The statute providing for an affidavit of good faith in addition to the recording of the mortgage in cases where the mortgagor retains possession, is rather a strong expression of legislative opinion against the propriety of such mortgages in all cases, than an implied recognition of the right of the mortgagor to control and dispose of the mortgaged goods.

The statute making it an offence to sell or remove the mortgaged goods without the consent of the mortgagee, was intended for the protection of the mortgagee, and to enforce fair dealing on the part of the mortgagor toward him. Undoubtedly, the mortgagor may sell the mortgaged goods without violating this statute, if he have the assent of the mortgagee. The effect of such assent upon the mortgage, however, as between the mortgagee and other creditors, is left to be declared by the rules of law relating to the validity of mortgages.

The facts set up in the answer bring the mortgage under consideration within the principle laid down in the case of Robinson v. Elliott, and upon said facts the mortgage was void as against the plaintiff in error. The demurrer should have been overruled. The judgment of the court below is reversed, and the cause remanded with directions to proceed to judgment in conformity with this opinion. —*West Coast Reporter.*

Wardlow v. List, Administrator.

Ohio Supreme Court Commission, December 9, 1884.

A material alteration in a note, made in accordance with an agreement between the maker and payee, does not avoid the note as to the maker, although the change was made some time after the agreement and without knowledge on the part of the maker that the agreement had been made effective by the actual alteration of the note.

Error to the District Court of Brown County.

List, as the administrator of the estate of Elias L. Abbott, deceased, brought his action in the court of common pleas against Benjamin Wardlow, and his petition contained two causes of action. The single question now presented in the case arose on the first cause of action, which was founded upon a promissory note of which the following is a copy:

$300.00 SEPTEMBER 27, 1871.

Twelve months after date I promise to pay to the order of E. L. Abbott, the sum of three hundred dollars at the ——, with eight per cent. interest. Value received.

BENJAMIN WARDLOW.

Wardlow in his answer averred that a material alteration of the note had been made.

The court below, at the request of the defendant, found the following to be the facts: On November 3, 1873, a payment of $46 was made, and credited on the note. On the 3d of June, 1874, there was another payment of $30 for which credit was given. After a third payment of $193 had been made, but not credited on the note, Abbott went to Wardlow's house taking with him the note. He and Wardlow's daughter then and there calculated how much was then due on the note, with interest at eight per cent. Wardlow was present, and Abbott told him that he would charge but eight per cent. interest. Abbott and Miss Wardlow did not agree in their computations of interest. Abbott left the note with Wardlow, so that his son might review their figures and calculations. Wardlow retained possession of the note for more

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than one year, when at the request of Abbott he returned it to him.

After this, Wardlow's wife went to Abbott's house and told him that she came to see whether the third payment had been credited upon the note, and whether he had fixed it so that they would have to pay but 8 per cent. He then gave a credit of $193 on the note—the third payment—as of date of April 10, 1880, and told her he would change the note to 8 per cent. He did not change the note while she was present. Afterwards the note, while in the possession of Abbott, was altered so as to bear 8 per cent. interest instead of 10 per cent. Mrs. Wardlow represented to Abbott that she was acting on behalf of her husband when she inquired about the credit and the change of the rate of interest. The court also found the fact to be that Wardlow did not authorize his wife to represent him, and that he did not know of the change until after Abbott's death.

On this cause of action the court of common pleas gave judgment in favor of Abbott's administrator, but allowed interest only at the rate of six per cent. The district court affirmed this judgment.

NASH, J.

The facts as found by the court of common pleas show that long before the alteration was made in the note, Abbott and Wardlow had agreed that the note should bear eight instead of ten per cent. interest. The note was changed so as to comply with this agreement. In making the change Abbott simply carried into effect the understanding existing between himself and Wardlow. It was competent for the maker and the payee of the note to so agree. The facts that Wardlow was not present when the change was made, and that he did not know that the note had been thus altered until after Abbott's death are not material. This is not such an alteration as has been held to avoid the note as against the maker, in many carefully considered cases in this State.

Judgment affirmed.

[To appear in 41 O. S. R.]

—*Weekly Law Bulletin.*

Owner's Liability for his Dog.

The number of dogs in this country and the corresponding number of masters or owners must now be pretty well known to the Chancellor of the Exchequer, owing to the dog-tax, which has for some years been imposed on those owners. Whether dogs or cats most abound cannot be known so well, and probably the cats have a decided majority. As regards the owners of each of these quadrupeds, the relations stand very much on the same footing. The cat being more domestic has not the same opportunities of doing mischief, for it keeps mostly in doors; but the dog being a great pedestrian and fond of outdoor exercise, is prone to trespass on fields and inclosures, and thereby to do misdeeds which embroil its owner with his neighbors. Hence it is necessary for the law to take cognizance of many difficulties caused by the wide-area and endless variations of circumstances under which owners and their dogs stand towards third parties. The ownership of tame animals forms indeed a large chapter of the law. Whether these are distributed into groups such as cattle, wild and tame beasts, birds and fish, game laws and fishery laws, cattle diseases, cruelty to animals, mad dogs and sane dogs, each and all involve many distinctions, and have gathered around them much learning. The dog alone as a title in the book of our laws fills a very large space. But at present we need not consider more than that small portion of the law which concerns the liability of the owner for his dog's misconduct.

As there is nothing unlawful in this country in the keeping of a dog, there is no maxim of public policy which interferes with the right of each person to do as he pleases. A dog is reckoned among tame animals which, like cattle, require very little care, and cause very little danger, and provided the dog-tax is paid, the owner may please himself as to whether he will keep a dog or none. When he resolves upon keeping a dog his first thoughts must be as to how far the dog may involve him in trouble and expense by its mischievous propensities. One characteristic soon becomes apparent, namely, that the dog is neither a servant nor an agent; there is no contract or agreement entered into between the two parties as to its wages or its general demeanor. A butler or a footman or an agent can put an end to the service; their rights and wrongs all turn on the nature of the contract, and in their case some contract is presumed as the tie which connects them. But a dog has no rights and no wrongs. It is a chattel—an automaton—a self-moving property; it has a will of its own; its obedience to orders is very limited; the control of the owner cannot be kept up by means of a string; it outruns him, and its animal spirits are so great that it overleaps fences and riots in trespasses, being apparently incompetent to comprehend the *meum* and *tuum* which we expect all servants to be familiar with. The peculiarity of these half and half relations causes the law to draw

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many fine distinctions. The complications in which the owner of a dog, which is inclined to sporting on its own account, is involved, would require some detail to unravel, and the way in which the poacher and his dog mix themselves up with the game laws cannot be stated at present for want of space. It is enough to consider only what will happen to the owner of a dog irrespective of the game laws.

As the dog is neither a servant nor an agent, nor yet a part of its owner's personalty, the leading doctrine which the law has adopted is, that the owner is not liable for any mischievous tendency or proclivity of his dog unless it has established as it were a bad character for that particular vice, in other words, the owner is not presumed to be responsible for its mischief unless he had reason to know it has a tendency to that vice, and unless he had taken no means to protect third parties against the consequences of the vice. And this knowledge he can scarcely ever acquire until the dog has perpetrated at least one little crime of the kind, and the owner has been told of it. This has long been the settled law, as is shown by the case of May v. Burdett, 9 Q. B., 101, and the other cases there mentioned. A leading case on this subject was decided about thirty years ago by the House of Lords, in Fleeming v. Orr, 1 Paton's Ap., 496; 2 Macq., 14; and it is of the highest authority. The Scotch judges had held that the owner of a dog that had worried sheep was liable for the value of the sheep killed, though the dog had never been know to bite sheep before. But the House of Lords, then under Lord Chancellor Cranworth, the greatest judge of his time, corrected the Scotch court, and reversed the decision, thereby holding that some previous knowledge of the evil propensity of the dog was essential in order to make the owner of the dog liable. This doctrine of English law was ridiculed by the Scotch judges as amounting to this, that every English dog was entitled to one worry before any liability could attach to its owner, and that the liability did not begin till the second offence. Nevertheless this has been and is still the law, except that since that time, and in consequence of that decision, separate statutes have been passed for Scotland, England and Ireland, in order to dispense with such antecedent knowledge in future cases of a dog worrying sheep. In all other cases the old rule still prevails that there must be a *scienter* in order to make an owner of a dog which bites mankind liable in damages.

The Scotch case of Fleeming v. Orr, referred to, was that of a young foxhound kept by a farmer, and which went out one day and worried and killed no less than eighteen sheep of a neighboring proprietor; and the farmer who kept it was held not liable. It was a case of hardship, and, of course, attracted the notice of the legislature, which thereupon passed a statute to correct in future such like hardships. Cases are constantly occurring of dogs biting children and mankind, and the old law is still applied, namely, to require some knowledge on the part of the owner that the dog had bitten somebody before. When that is proved the owner's liability is established, if he has taken no care to guard against a repetition of the misconduct. The biting of mankind is the common case in which owners of dogs become involved in liability. But there are other acts and misfeasances of dogs which are not entirely mischievous and dangerous, but are rather incident to the playful instincts of the animal.

One noted case of Read v. Edwards, 17 C. B., N. S., 245, occurred twenty years ago, which well illustrates the law, especially as it was a considered judgment and delivered by Willes, J. The defendant kept some dogs at his house, which was some distance from a wood and plantation of the plaintiff, called Hackering Wood. In this wood the plaintiff preserved game and reared pheasants under hens, as the defendant well knew. One of the defendant's dogs was frequently seen hunting alone in this wood, and the gamekeepers cautioned the defendant about it, and told him that he must keep that dog at home. The defendant, however, paid no attention, and neither fastened the dog up, nor took any precautions for keeping it at home. One day in August the keepers saw this dog and another strange dog hunting in the wood, and in the act of destroying a large quantity of pheasants immediately surrounding the hen coops. The plaintiff thereupon brought an action, and at the trial a verdict of £5 damages was given him. Afterwards a new trial was applied for on the ground that there was no evidence of the infringement of any right of sporting, and that the mere destruction of game was no ground of action, for game was not property.

The judgment of the court was in favor of the plaintiff; and valuable remarks were made as to the law. Willes, J., observed: "Had this case turned upon the question whether the owner of a dog is answerable in trespass for every unauthorized entry of the animal into the land of another, which was the case adduced of the owner of an ox, we should have been slow to answer the question in the affirmative; but we are aware of no authority

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for the existence of this more extended liability, and there are reasons upon which we need not now enter for distinction in this respect between oxen and dogs or cats, on account of the difficulty and impossibility of keeping the latter under absolute restraint, and the slightness of the damage which they ordinarily do in their wanderings; and the latter class of animals, by the common usage of mankind, are allowed a greater degree of liberty." The judgment then went on to state that there was sufficient evidence that the defendant knew that his dog was of a peculiarly mischievous disposition and addicted to poaching in the preserves of the plaintiff, and on that ground the court held the verdict was right and must be upheld.

There are other similar cases of liability for peculiar vices proved to have belonged to animals, and known to the owner, and unrestrained. Thus, in the case of Lee v. Riley, 18 C. B., N. S., 722, a horse trespassed through a fence which its owner was bound to keep in repair, into the field of a neighbor. It then mixed with other horses, and kicked one in such a way as to cause its death. The main contention there was that the kicking of the plaintiff's horse was not the reasonable and necessary consequence of the straying of the defendant's horse. But the court held that there was a natural and obvious connection between the straying and the kicking, and that the defendant was liable. The court also held that in that case it was not necessary to prove that the defendant knew of any vicious propensity of his horse to kick; it was enough that the horse strayed owing to the defective fence and did the mischief.

Probably this last case led to another case of Sanders v. Teape, *ante*, p. 757, very recently decided. In the latter case a working man was quietly digging a drain in a garden, and being intent upon his work, and stooping a little forward, suddenly a large Newfoundland dog came down heavily on his back and greatly injured him. On coming to his senses, and after due inquiry, he sued the owner of the dog for damages. It turned out that the defendant was the owner of this dog, and a friend had taken it out for a little exercise. In its playful gambols with other dogs it entered the garden of its owner, and jumping over the low fence which divided it from the neighbor's garden, fell, by some mischance, into the hole which the plaintiff was digging. This was obviously an accident incidental to the playful disposition of the dog, and such as might happen to all dogs. The dog in one sense was trespassing on the neighbor's garden, but probably no mischief would have followed but for the plaintiff being for the moment there and busily engaged. The action was brought in the county court, and there was no attempt to prove any particular negligence in the owner, or any particular vice in the dog. It was an incident in dog life which everybody is familiar with. It cannot be repressed by any care or foresight. The exuberant animal spirits must needs find an outlet. If dogs are to be allowed, then their sportive antics and exciting runs to keep their blood warm must be put up with. Nobody can complain, even though he may be accidentally the sufferer. On this view the court dismissed the action as untenable.

These illustrations only make clear the fundamental rule that the owner of a dog is not liable for the eccentricities and proclivities of its temper, unless these amount to some dangerous vice, and the owner has become acquainted with the vice and has taken no pains to guard against its subsequent occurrence.—*Justice of the Peace.*

Sitting in Dharna.

Last week, in a case tried before Mr. Justice Mathew, a letter written by the plaintiff to the defendant was put it evidence, in which the plaintiff threatened to commit suicide unless the defendant paid the debt. Learned men have found traces of the practice of sitting in *dharna* in many communities dwelling far apart, and have deduced from that fact a common origin. But the instance proved in the Royal Courts shows that the conclusion drawn by Maine and other great writers is fallacious. It is part of our common humanity to work upon our fellow-men by exhibiting the evil which will fall upon ourselves if they fail to do their duty towards us, or it may be to show mercy to us. Probably the best account of sitting in *dharna* is to be found in Mr. Nelson's work on "Hindu Law." The learned judge says, at p. 165:

"The recognized mode of compelling a debtor to pay up appears to have been by sending a Brahman to do *dharna* (is this our '*dun?*') before his house, with a dagger or a bowl of poison, to be used by the Brahman on his own body if the debtor proved obstinate. When the tax collector gave too much trouble, a ryot would sometimes erect a *koor*, or pile of wood, and burn an old woman on it by way of bringing sin on the head of his tormentor. The *lex talionis* obtained in the following shape. Persons who considered themselves aggrieved by acts of their enemies would kill their own wives and children, in order, as we may suppose, to compel their enemies to do a similar act to their own hurt. Thus two

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Brahmans cut off their mother's head to spite a foe. And it seems that upon being punished by loss of caste, out of deference to the feelings of the British Government, these simple-minded men expressed the greatest surprise, since they acted, so they said, through ignorance. On one occasion five women were put to death together for witchcraft, after being regularly tried for the offence, according to custom, by the heads of their caste.

"With regard to the *lex talionis*, a letter is preserved in Recueil X of the *Lettres cur. et ed.*, written by Father Martin in 1709, in which he describes the horrible practice in vogue amongst the inhabitants of the Marava country, of killing or wounding oneself, or one's wife or child, in order to compel one's enemy to go and do likewise. Such a practice can obtain only where no legal means exist of obtaining reparation for wrongs suffered. It would be very interesting to know to what extent this natural law has prevailed, in various forms, in South India, and whether its influence has yet altogether died out. The practice of *dharna* would seem to be nothing more than a threat of instantly resorting to the *lex talionis*. And I take it that Marco Polo was mistaken in his view of the meaning of a creditor drawing a circle round his debtor, by way of arresting him, when he said that a debtor who breaks such arrest 'is punished with death as a transgressor against right and justice,' and that he (Marco Polo) had seen the King himself so arrested and compelled to pay a debt. Doubtless the King was coerced by the threat, expressed or implied, that the creditor would kill or wound himself, if not satisfied, in which case the King would have been bound to kill or wound himself in return. Father Bouchet, in the letter cited above, tells us that obstinate debtors were arrested in their houses by their creditors in the name of the Prince, under pain of being declared rebels, and when so arrested, durst not pass out until bystanders had interceded and made the creditors come to terms. The use of the name of the Prince I regard as imaginary, and opposed to native ideas. What coerced the debtor probably was the fear of his creditor injuring himself. And possibly it is this fear that often operates on the minds of native servants of the present day when they decline to go on a long journey with their masters without first partially satisfying their creditors. And where, as so often happens, an old man or woman is killed by his or her own party in a boundary riot, probably in most instances the object of the slayers is to bring sin on their opponents."

An Ante-Nuptial Contract.

James MacArthur, who died in January, 1879, left by his will one-third of his estate to his wife, Catharine. The will was probated the following March, when it appeared that the value of Mrs. MacArthur's share was $5,697. Alexander Boyd induced the widow to promise to marry him, and then, on the 6th of May, 1879, he persuaded her to execute an agreement giving him one-half her share in contemplation of their marriage. She was an ignorant woman, addicted to drink, and unable either to read or write, and was ignorant of the value of her husband's estate, or her interest in it. Boyd married her, and afterwards sought to obtain the money from the executors. The Surrogate directed that one-half of Mrs. Boyd's share should be set apart pending a judicial determination of Boyd's right under the agreement. Boyd then brought a suit in Superior Court to have the contract adjudged a valid and subsisting agreement. The case was tried before Judge Truax, when it appeared that Boyd lived with the defendant but a short time, and that they are now separated. Judge Truax dismissed the complaint, holding that the question whether the contract is valid, is merely a speculative one, which the court will not entertain, and if the action is to be taken as one to compel a specific performance of the agreement, it cannot be maintained, because Mrs. Boyd has not the possession of the property.

Matrimonial Brokerage.

Bernard Pasalneck sued David Hirsch in the City Court, asserting that over two years ago Hirsch engaged with him to induce Herman Altman to give Hirsch his daughter Henrietta in marriage, with $800 as dowry. The plaintiff says that he succeeded, and that Henrietta Altman became Mrs. Hirsch, and the $800 was paid over. For his services he claims $50, which, he says, defendant agreed to pay. When the case was called before Judge McAdam, there being but one juror available, eleven lawyers were called into the jury box by consent. Among them were Justice Alfred Steckler and Edward P. Wilder. Judge McAdam then dismissed the complaint, upon the ground that the contract was against public policy and void.—*N. Y. Daily Register.*

The largest room in the world, under one roof and unbroken by pillars is at St. Petersburg. It is 620 feet long by 150 in breadth. By daylight it is used for military displays, and a battallion can completely maneuvre in it.

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Responsibility of Guardian.

In Harris v. Berry (May, 1884; 6 Kentucky L. Rep., 157), the duty of a guardian in respect to property or debts in another State was passed upon by the Court of Appeals of Kentucky.

The guardian, who resided in Kentucky, held a claim against a person in missouri, which he failed to succeed in collecting, and it was sought to hold him liable therefor. It appeared that he had sought the advice and employed as his agent the best counsel available in Missouri, and had refrained from issuing execution, by the advice of that counsel, on the ground that more could be made by delay than by attempting to coerce payment. The court held that the guardian was not liable.

Judge PRIOR says: "He gave no authority to his attorney to hold up the executions longer than he thought prudent, as Berry states, and to use such judgment on his part as would enable him the more certainly to make the money. His actions and conduct should not be judged, and the same responsibility attached to his acts as would be the case if he had lived in the county and State, and, as a business prudent man, would have been required to exercise his own judgment in regard to a matter about which he was as capable of judging as the attorney employed by him. The testator knew when he selected the appellee as the guardian for his children that the latter must necessarily select some one to act for him in Missouri in winding up this estate. If, then, he selected a prudent adviser and counsellor, he ought not to be made liable, even if his agent acted improperly in not issuing his execution sooner."

Habeas Corpus.

Marie Heselmann, a pretty blonde, 19 years old, was before Judge Donohue, in Supreme Court, Chambers, yesterday, accompanied by Bernhard Flammer, upon whom the writ had been served at the Hotel Grutli, in this city. The writ was obtained by Salomon & Dulon, counsel for the German Consulate, on the petition of Carl Pollier, the German Consul. The petition was based upon telegrams received from the German Foreign Office asking for the arrest and detention of Miss Heselmann, and charging that she had been lured from her home at Wesel, Germany, by Flammer, who left a wife behind him. The couple came over on the steamer Bothnia, Flammer representing her to be his wife. When asked by Judge Donohue if he had anything to say, Flammer replied, through an interpreter, that the girl wanted to come with him. Then a lawyer volunteered to act as Flammer's counsel, and put in a return denying that he had induced Miss Heselmann to elope with him, and asserting that she came voluntarily. Judge Donohue decided that as the girl, by the laws of Germany, was the ward of her parents until she reached the age of 21 years, and minors were, under the laws of this State, the wards of the court, she must be handed over to the German Consul to be returned to her parents. Miss Heselmann, on being interrogated, said she came with Flammer voluntarily, because she liked him.—*N. Y. Daily Register.*

THE oldest judge in England is Vice Chancellor the Hon. Sir James Bacon, above named; the youngest, the Hon. Sir Archibald Levin Smith, of the Queen's Bench Division, aged 48. The oldest judge in Ireland is the Hon. John Fitzhenry Townsend, LL. D., of the Court of Admiralty, aged 73; the youngest, the Right Hon. Andrew Marshall Porter, Master of the Rolls, aged 48. The oldest of the Scotch Lords of Session is the Hon. Sir George Deas (Lord Deas), aged 81; the youngest, the Hon. Alexander Smith Kinnear (Lord Kinnear), aged 51. Why should judicial wisdom be deemed superannuated in this country at 70?

NOTES OF RECENT DECISIONS.

Negotiable Instrument: Promissory Note; Relation of Party; Third Person.—A contract expressed on the face of a negotiable instrument cannot be varied without an express agreement. Knowledge that the parties to a note occupy between themselves a relation different from that expressed on the face of the note, is not sufficient to alter their relations to a third party having such knowledge. [Scott v. Bank of Quebec; Canada, Q. B., Oct. 8, 1884.]

Personal Property: Sale on Sunday; Rights of Vendee.—Where the contract of sale was entirely executed on Sunday, title passed to the purchaser, and the vendee could not recover, consequently an attaching creditor could have no more right therein than the vendee. [Schneider et al. v. Sansum; Tex., Oct. 14, 1884.]

Landlord and Tenant: Crop Lease.—An instrument by which A. "leases" to B. a farm for the term of one year, B. to "deliver" to A. one third of the crops and furnish the seed and tools, pay all threshing expenses, and keep the premises in repair, creates the conventional relation of landlord and tenant. [Strain v. Gardner; S. C. Wis.]

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Railroads: Sparks from Engine; Negligence; Damages.—In a suit for damages from a fire caused by sparks from a locomotive, evidence that the engine at the time of the accident emitted a large and unusual quantity of sparks, is sufficient to make out a *prima facie* case of negligence against the defendant. [Ruppel v. The Manhattan Ry. Co.; N. Y. C. P., Dec., 1884.]

Appropriation of Water: As Between two Appropriators of the Same Stream; Rights of Appropriators.—As between two appropriators of the same stream, the one whose appropriation was first made, has the prior right to the use of such water. The amount of water to which a prior appropriator is entitled, is limited to the amount actually applied to the purpose for which the appropriation was made. [Simpson v. Williams; S. C. Nev., Nov. 28, 1884.]

Chattel Mortgage: Validity of, Unrecorded; Effect of Written Guaranty of one Mortgagee to Another.—A mortgage which is good against the deceased is also good against his administrator and the creditors. The rule as laid down in the case of Stewart v. Platt, 101 U. S., 731, governs. Where two mortgages stand on equal footing, and are to be paid out of the same fund, the promise in writing of one mortgagee that he will see the other paid, postpones the mortgage of the former and gives priority to the latter. Under the statute of frauds, where a promise in writing is made to pay whatever one party owes another, it is binding, though no consideration be expressed. Forbearance to enforce a debt is sufficient consideration moving to such a promise. [Sanders v. Barlow; U. S. C. C. D. Col.]

Written Instrument: Construction: When for Court and When for Jury.—The construction of a written instrument is exclusively for the court, except when it cannot be understood without reference to facts not within the writing, and then the jury are to judge of the whole together. If there be a patent ambiguity in the terms of a written contract the court must solve it; but if ambiguity arise from extrinsic evidence it must be solved by the jury. [Foster v. Bery & Co., Pa.; Nov. 12, 1883.]

Carrier: Railroad; Excursion Ticket; Expulsion of Passenger.—The appellant purchased of an agent of the appellee at a reduced rate of fare an excursion ticket, to be used between the stations designated within three days, including the day of sale. He made the journey in one direction, and after the expiration of the time limited he attempted to return on the ticket, which the conductor declined to receive for his passage, and upon his refusal to pay the fare demanded he was expelled from the train. In an action against the railroad company to recover damages for such expulsion, it was *held*, that the plaintiff's rights were limited by the ticket, and he was rightly required to leave the train upon refusing to pay the fare demanded; and after being expelled, he had no right to be readmitted except upon payment of full fare for the whole distance. [Pennington v. Phila., etc., R. R. Co. Opinion by Bryan, J. See 27 Am. Rep., 255; 28 Eng. Rep., 272; 30 Id. 284.]

The Courts.

SUPREME COURT OF THE DISTRICT OF COLUMBIA GENERAL TERM.

Feb. 24, 1885.

Central National Bank v. Hume. Appeal bond approved.

Applications of I. Morgan Esterling and J. T. Scaggs, for admission to the bar. Referred to examining committee.

B. & P. R. R. Co. v. District of Columbia. Arguments submitted.

Feb. 25, 1885.

Alexander v Duffy. Decree below affirmed.

Hopp v Viegle. Argued and submitted.

Sunderland and Hillyer v. Kilbourn et al. Penalty of appeal bond fixed.

Feb. 26, 1885.

In re estate of Jonathan Dennis, jr. Order below affirmed.

Application of George E. Lewis for admission to the bar. Referred to examining committe.

IN EQUITY.—New Suits.

Feb. 24, 1885.

9342. Timothy Sands, alleged lunatic. Upon petition of Mary E. Davis, de lunatico inquirendo. Com sol, W. A. Cook.

Feb. 25, 1885.

9343. Thomas Sparks v Sylvia L. Phillips et al Injunction. Com sol, Chas. S. Moore. Defts sol, R. Wilson.

Feb. 26, 1885.

9344. Harriet Sullivan et al. v. Wm. A. Gordon et al. To substitute trustee, &c. Com sol, W. H. Smith.

Feb. 27, 1885.

9345. Sallie H. Owen v. Kennedy R. Owen. Com sols, Worthington & Heald.

9346. Eppa Hunton v. Charles Dickenson et al. For Injunction. Com sol, Chas. Thompson, jr.

9347. Mary Gallagher et al. v Joseph Anderson et al. To annul deeds. Com sol, J. McD. Carrington.

CIRCUIT COURT.—New Suits at Law.

Feb. 26, 1885.

25985. Wm. McLean & Son v. Roberts & Dyer. Judg't of Justice Helmick, $62.26. Pltfs attys, Newton & Berryman.

25986. John H. Walter v. Sarah Braithwaite. Certiorari. Defts atty, W. T. Bailey.

25987. John H. Barnes v. Junius B. Slack. Damages, $10,000. Pltfs atty, W. A. Cook.

25988. Charles E Zane v. Leopold Behrends. Acct., $105. Pltfs atty, Mills Dean.

25989. Same v. Adolph Dammann. Note, $8253.42. Pltfs atty, same.

25990. Thomas Higgins et al. v. Edward O. Walker et al. Bill of exchange, $1,075. Pltfs atty, W. A. McKenney.

PROBATE COURT.—Justice Hagner.

Feb. 27, 1885.

Estate of Geo. W Duvall. Letters of administration issued to Jane Duvrll.

Estate of Alfred Falconer. Letters testamentary issued to E M. Chapin and James Campbell.

Estate of Henry K. Davenport. Letters of administration issued to Richard G. Davenport.

Estate of Charles M, Murdock Letters of administration issued to Frederick W. Jones.

Estate of Alexander S. De Woloski. Hearing set for March 6.

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Estate of Elizabeth Wirt Goldborough. Letters of administration issued to Dr. William Wirt on bond of $10,000.

Estate of Mary Shannon. Letters of administration issued to James Fullerton, on bond of $18,000.

Estate of Hamilton Hughes. Letters of administration issued to Hamilton Hughes.

Estate of Frances A. Lockwood. Letters of administration issued to Margaret M. Lockwood.

Estate of John B. Randolph. Letters of administration issued to John B Randolph on bond of $1,000.

Estate of Henry N. Barlow. Order referring petition of administrator to W. H. Dennis to take proof.

Estate of Leonidas Knowles. Letters testamentary issued to Susan G Knowles.

Estate of Willis Starkes. Letters testamentary issued to Sarah Miner.

Estate of Catharine Magruder. Final account fo executor submitted

Estate of Charles E. Hanley. Final account of executor balanced.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 24h day of February, 1885.

SARAH W. GARDNER v. GRENVILLE G. GARDNER. } No. 9325, Equity.

On motion of the complainant, by Mr. Theodore H. N. McPherson, her solicitor, it is ordered that the defendant, Grenville G. Gardner, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice

True copy. Test: 9 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 26th day of February, 1885.

FRANCES E. BURNS v. ARTHUR P. BURNS. } No. 9341. Eq. Doc. 24.

On motion of the plaintiff, by Messrs. Miller and Forrest, her solicitors, it is ordered that the defendant, Arthur P. Burns, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER Justice.

A true copy. Test: 9 R. J. MEIGS, Clerk

THIS IS TO GIVE NOTICE,

That the subscriber of the District of Columbia hath obtained from the Supteme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Josiah Perry, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of February, 1885.

9 MARY PERRY, Executrix.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Elizabeth Fisher, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of February, 1885.

JOSEPHINE WALDECKER,

O. G. ECKSTEIN, Solicitor 9 Executrix.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtaned from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Mary Shannon, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of February, 1884.

JAS. FULLERTON,

9 Administrator.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February 30, 1885.

In the matter of the Estate of Isadora C. Causten, late of Washington, D. C., deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Lida B Causten, praying tnat letters be granted to Walter Ker.

All persons interested are hereby notified to appear in this court on Friday, the 20th day of March next, at 12 o'clock m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B HAGNER, Justice.

Test: 9 H. J. RAMSDELL, Register of Wills.

JAMES H. TAYLOR, Solicitor.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Frances A Lockwood, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of February, 1885.

MARGARET M. LOCKWOOD,

HENRY M. BAKER, Solicitor. 9 Executrix.

THIS IS TO GIVE NOTICE,

That the subscriber, of Washington City, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Samuel M. Barker, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of December, 1884.

WILLIAM M. BARKER, Administrator.

R. W. MCPHERSON, Solicitor. 6 3

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February 10, 1885.

In the matter of the Estate of Jane Duncan, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Mary Marks.

All persons interested are hereby notified to appear in this court on Friday, the 6th day of March, next, at 11 o'clock a. m., to show cause why the said Letters of Administration, on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: H. J. RAMSDELL, Register of Wills.

WILLIAM T. BAILEY, Solicitor. 7-3

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business. February 10, 1885.

In the matter of the Estate of Joseph W. McCorkle, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased, has this day been made by James P. Hambleton, a creditor.

All persons interested are hereby notified to appear in this Court on Friday, the 6th day of March next, at 11 o'clock, a. m., to show cause why Lettrs of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A, B. HAGNER, Justice.

Test: H. J. RAMSDELL, Register of Wills.

ISAAC H. FORD and JOHN N. OLIVER, Solicitors. 7-3

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 27th day of January, 1885.

THOMAS J FISHER vs. JOHN R. TUCKER ET AL., Heirs of Thomas Tudor Tucker. } Equity. No. 9305.

On motion of the plaintiff, by Hillyer & Ralston, his solicitors, it is ordered that the defendants, H. Tudor Tucker Fanny Bland Graham, J. R. Graham, Mary T. Magill. Evelina Powell, W. L Powell, Virginia Edwards, John E Edwards, Elizabeth Dallas Tucker, Virginia B Tucker, Dallas Tucker, Hattie A. Tucker, Cassie D. Brown, John Thompson Brown, John R. Tucker, Emma B. Tucker Evelina T. Lucas, D. B. Lucas, Nannie S. McLaughlin, I Fairfax McLaughlin, St. George Tucker Brooke, Mary B Brooke, Frank J. Brooke, Gay Bentley Brooke, D. Tucker Brooke, Lucy Higgins Brooke, Henry L. Brooke, Elizabeth D. Brooke, Laura Beverly Bedinger, Everett W. Bedinger. Elizabeth Gilmer Tucker, Walker Gilmer Tucker, Lizzie Edwards Tucker. Evelina Tucker, Lucy Richardson, Robert B. Richardson, Annie Tyler, Lyon G. Tyler, Eliza Taylor Tucker, Alfred B Tucker, Cynthia B T. Coleman, Charles W. Coleman, B. St. George Tucker, Eliza C. Tucker, Fannie B. B. T. Taliaferro, Julia Clark Tucker, Nathaniel Beverly Tucker, Wm. Francis Peyton Tucker, John R. Bryan Delia Page, John R. Page, Fannie Carmichael, S W. Carmichael, Georgia B. Grinnan, A. G. Grinnan, John R Bryan, Jr., Margaret R. Bryan, St. George Tucker C Bryan, Joseph Bryan, Isabel S. Bryan, C. E. Bryan, Mary S. C. Bryan, Fannie Bland Brown, H. Peronneau Brown, Virginia C. Braxton, St George Tucker Coalter, Ada B Lewis Tucker, Virginia Tucker, Virginia Lewis Tucker, Francis M Tucker. Mary Thornton Tucker, and Nathaniel Beverly Tucker, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day, otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Asso. Justice.

A true copy. Test: 5 R J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Catharine Robinson, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of January, 1885.

MICHAEL BOYLAND, Administrator.

H. B. MOULTON, Solicitor. 5-3

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration, on the personal estate of Margaret Waters, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of January, 1885.

7-3 COLLINS CRUSOR,

GORDON & GORDON, Solicitors. Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February 13, 1885.

In the matter of the Estate of Sabra P. Abell, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Charles R. Abell.

All persons interested are hereby notified to appear in this court on Friday, the 6th day of March, next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admittied to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

By the Court. A. B. HAGNER, Justice.

Test: 7-3 H. J. RAMSDELL, Register of Wills.

Legal Notices.

THIS IS TO GIVE NOTICE

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Catharine Robinson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of February, 1885.

ALBERT F. FOX.

H. B. MOULTON, Solicitor. 7-3 Administrator.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John Casey, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of January, 1885.

5-3 SAMUEL BIEBER,

LEON TOBRINER, Solicitor. Administrator.

THIS IS TO GIVE NOTICE.

That the subscriber of Washington City, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration d. b. n., on the personal estate of William Martin, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of January, 1885.

5 CHARLOTTE A. MARTIN.

EDWARDS & BARNARD, Sol'rs. Adm'x de bonis non.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Archibald C Spalding, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of January, 1885.

5-3 LUCY SPALDING, Ex'x.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Special Term for Orphans' Court Business.

In re estate of Samuel Pumphrey, deceased.

On consideration of the petition of Elizabeth A. Pumphrey, Nellie F. Pumphrey and Annie L. Pumphrey, praying the appointment of Chastain C. Meador as administrator of above decedent, it is by the Court this 13th day of February, 1885, ordered that the prayer of said petition be granted, unless cause to the contrary be shown on or before Friday, the 6th day of March, 1885. Provided a copy of this order be published in the Washington Law Reporter three times before said last mentioned date.

A. B. HAGNER.

A true copy. Test; H. J. RAMSDELL,

Feb. 13th, A. D. 1885. 7-3 Register of Wills, D. C.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Jane Rutledge, late of Niles, Michigan, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of February, 1885.

CHARLES A. CHAPIN,

7-3 Adm'r. 1331 F St. N. W.

JAS. R. COOK and N. DUMONT, Rooms 3 and 4. 1331 F St. N. W.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February 6, 1885.

In the case of Francis M. Lazenby, Administrator of Thomas A. Lazenby, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 13th day of March A. D. 1885, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 6 H. J. RAMSDELL, Register of Wills.

JOSEPH J. WATERS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 30, 1885.

In the case of Luther Martin the deceased adm'r of William Martin, deceased. James S. Edwards, the administrator w. a., of the said Luther Martin, has, with the approval of the Court, appointed Friday, the 6th day of March, A. D. 1885 at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Administrator w. a. will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

Test: 6 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business January 30, 1885.

In the matter of the Estate of Caroline Elizabeth Van Newkirk, late of the City of Washington, District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased, has this day been made by Benjamin F. Evans, of the City of Washington.

All persons interested are hereby notified to appear in this Court on Monday the 2nd day of March next at 12 o'clock, m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washngton Law Reporter previous to the said day.

By the Court. A. B HAGNER, Justice.

Test: H. J. RAMSDELL, Register of Wills.

E. B. HAY, Solicitor. 5-3

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration d. b. n., c. t. a, on the personal estate of Elijah W. Hager, late of Onondaga, N. Y., dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of January, 1885

5 3 JOHN TRIMBLE,

HAGNER & MADDOX, Sol'rs. Administrator d.b.n.,c.t a.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February 20th, 1885.

In the matter of the Estate of James Torphy, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and Letters of Administration, c. t. a, on the estate of the said deceased, has this day been made by Benjamin F. Rittenhouse.

All persons interested are hereby notified to appear in this Court on Friday, the 20th day of March next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration, c. t. a. on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER. Justice.

Test: H. J. RAMSDELL, Register of Wills.

GORDON & GORDON, Solicitors. 8-3

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Joseph D. Harris, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of January, 1885.

ELIZABETH W. HARRIS, Executrix.

R. F. LEIGHTON, Solicitor. 5-3

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business. February 13, 1885.

In the case of James L. Barbour, Administrator of Bridget M. Fitzmorris, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 13th day of March, A. D. 1885, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 7 H. J. RAMSDELL Register of Wills.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Garret B. Davis, late of Baltimore, Md., deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of February next: they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of February, 1885.

REGINALD FENDALL,

8-3 Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 20th day of February, 1885.

CHARLOTTE M. BAKER v. JNO R. BROOKS ET AL. } No. 9329. Eq. Doc. 24.

On motion of the plaintiff, by Messrs. Appleby & Edmonston, her solicitors, it is ordered that the defendants, Hannah Brooks and William Kilgour, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.

True copy. Test: 8-3 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 12th day of February, 1885.

ZECHARIAH CHAFEE, trustee, v. SAMUEL BLATCHFORD ET AL. } No. 9174. Eq. Doc. 24.

On motion of the plaintiff, by Mr. J. J. Darlington, his solicitor, it is ordered that the defendant, Burr W. Griswold, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.

A true copy. Test: 7-3 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 12th day of February, 1885.

ZECHARIAH CHAFEE, trustee, v. WILLIAM S, HOYT ET AL. } No, 9175. Eq Doc. 24.

On motion of the plaintiff, by Mr J. J. Darlington, his solicitor, it is ordered that the defendants Wm. S Hoyt, Edwin Hoyt, jr., Chas. G. Francklyn and Susan S. Francklyn, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice, &c.

A true copy. Test: 7-3 R. J. MEIGS, Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February 16, 1885.

In the case of Annie Tolman Smith, Executrix of Abby Noyes Condron, deceased, the Executrix aforesaid has, with the approval of the Court, appointed Friday the 13th day of March, A. D 1885, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executrix will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test 8-3 H. J RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 17th day of February, 1885.

HUGH DOWNEY ET UX
v.
MARGARET E. KING, JAMES I. KING, HUGH TUOHY, BRIDGET TUOHY and PATRICK LEONARD. } No 9334. Eq. Doc 24.

On motion of the plaintiffs, by Mr. N. Dumont, their solicitor, it is ordered that the defendants, Margaret E. King and Patrick Leonard, cause their appearance to be entered herein on or before the first rule day, occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 9-3 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 19th day of February, 1885.

HENRY FETTER
v. } No. 9340. Eq. Doc.
THOMAS J. LOGAN ET AL.

On motion of the plaintiff, by Mr. Saville, his solicitor, it is ordered that the defendants, Thomas J. Logan, George W. Linville, and John Galt, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy Test: 8-3 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February 14th, 1885.

In the matter of the Will and Estate of James Barry, late of Washington City, District of Columbia, deceased.

Application for Letters of Administration, de bonis non, cum testamento annexo, on the estate of the said deceased has this day been made by Dayton S. Ward.

All persons interested are hereby notified to appear in this court on Friday, the thirteenth day of March, next, at 11 o'clock a. m., to show cause why Letters of Administration de bonis non. c. t. a , on the estate of said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice
Test: 8-3 H. J. RAMSDELL, Register of Wills.
WM. T. S. CURTIS. 23, 25 & 26, Kellog Building, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

MARGARET E. STODDART
v. } No. 8833. Eq. Doc. 23.
CATHARINE E. BOOTH ET AL.

George E. Hamilton, trustee appointed by a decree of this Court in the above entitled cause to sell the real estate in these proceedings mentioned, to wit: the north twenty-five (25) feet and six and one-half (6½) inches, of lot 22, in square No. 37 by the depth of said lot, having reported to the Court that after complying with the requirements of said decree, he offered for sale at public auction the aforesaid property on the 19th day of January, A. D. 1885, and that John Firm, of the City of Washington, in the District of Columbia, became the purchaser thereof, at twenty-one cents per square foot, it is by the Court on this 3d day of February, A. D. 1885, ordered that said sale be, and the same is hereby ratified and confirmed unless cause to the contrary be shown on or before the 5th day of March, 1885.

Provided, a copy of this order be published in the Washington Law Reporter once a week for three weeks before the said 5th day of March, 1885.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 7-3 R. J. MEIGS, Clerk,

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

FRANKLIN P. SELZER ET AL.
v. } No. 8901. Eq. Doc. 24.
GEORGE A. HASKE ET AL.

Upon consideration of the report of Charles A. Walter, trustee herein, and of the report of the Auditor filed herein on the 11th day of February, 1885, upon order of reference passed in this cause on the 14th day of January, 1885; and it appearing to the court that the defendant, Ruppert, has complied with the terms of sale as provided in said decree, by paying to the trustee in this cause the sum of $291. 27, as ascertained by said Auditor's report to be due by him under said decree, it is, therefore, by the Court, this 18th day of February, 1885, ordered that the sales to said Ruppert of part of lots 13 and 14 in square 762, beginning at the northwest corner of said lot 13, and thence running southwesterly along the western line of said lot, 132 feet 3 inches, thence south 18 feet, thence east 36 feet 7 inches, thence north 26 feet 10 inches, thence east 4 feet 6½ inches, thence north 21 feet 5½ inches, thence east 1 foot 10 inches, thence northeastwardly to a point 30 feet 6 inches, from Pennsylvania Avenue on a line drawn parallel with and 16 feet from the western line aforesaid, thence along said line to said Avenue, and thence along said Avenue 16 feet to the place of beginning; and part of lot 6 in square 534, beginning at a point on the line of a 15 foot alley in said square, 113 feet 5½ inches from the southeast corner of said lot, and running thence west 24 feet 8½ inches, thence north 113 feet feet 5½ inches, to a thirty foot alley in the rear of said lot, thence east on the line of said alley 24 feet 8½ inches to said 15 foot alley, thence south on the line of said alley 113 feet 5½ inches to the place of beginning, to be, and the same are hereby ratified and confirmed, unless cause to the contrary be shown on or before the 18th day of March, 1885:

A. B. HAGNER, Justice.
A true copy. Test: 8-3 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of administration on the personal estate of Samuel Cook, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 13th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of February, 1885.

THOMAS D. BOND, Adm'r,
JUDSON CULL, Solicitor. 7-3 125 Pa. Ave., N. W.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, February 13th, 1885.

In the case of John W. Ross, Administrator of the estate of Mary Maroney, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 6th day of March, A. D. 1885, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 7-3 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 20th day of February, 1884.

HENRY CLARKE ET UX,
Complainants,
v. } No. 9338. Eq. Doc. 24.
HENRY HOHMAN ET AL.,
Defendants.

On motion of the plaintiffs, by Messrs. Hagner & Maddox, their solicitors, it is ordered that the defendants, Henry Hohman, and Louise Hohman, his wife, Amelia H. Perry, widow of Anson C. Perry; Leonard Perry, Rachel Rynders, sometimes called Rachel Reynolds, and William Rynders, her husband, Annetta Rynders, sometimes called Annetta Reynolds, and Hiram Rynders, her husband, Elizabeth A. Lent, and Benoni S Lent, her husband, Elizabeth Atwell, and John Atwell, her husband, and Rossetta Hibbard, defendants, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 8-3 R. J. MEIGS, Clerk.

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Washington Law Reporter

WASHINGTON - - - - - - - March 7, 1885.

GEORGE B. CORKHILL - - - EDITOR

THE *Insurance* seems to be very much pleased with the doctrine laid down by the Supreme Court of the District of Columbia in the recent case of the Central National Bank v. Annie G. Hume and others, the full report of which we have already printed, and, after quoting an extract from the opinion of the court, concludes thus: "That is sound and wholesome talk. It puts a man's family among his preferred creditors, recognizes the validity and strength of his wife's and his children's just claims upon him, and repels the presumption of fraud which Shylock would raise against an honest debtor's provision for those of his own household. The logical deduction from this sound doctrine is that it is the duty of every man who has a family, to take care of the supreme debt which he owes to secure them. This is not only the prompting of nature and paternal love, but as well the mandate of common honesty."

A TEMPORARY restraining order was a short time ago granted by the Hammond County (Ohio) Court of Common Pleas, enjoining the proprietor of a skating rink from operating his establishment in the daytime on the ground that it was a nuisance. The ultimate result of this in the court will be of great interest to many engaged in the same business.

DYNAMITING and Extra-Territorial Crime, an article by Francis Wharton, LL. D., written for the *Criminal Law Magazine* for March, 1885, has come to us neatly bound in pamphlet form. Mr. Wharton says that his object in writing this article is to show that the prosecution of persons sending dynamite abroad for criminal purposes belongs to the State from whose soil the dynamite is sent. While we would be inclined to consider the question as one which would be undisputed, yet we are glad to know that the masterly pen of Mr. Wharton has laid the whole law on the subject before us. At this time, too, the subject is of particular importance, and it is well to have the authorities collected and examined by so celebrated a lawyer as Mr. Wharton. We regret that as yet we have been unable to give this article the attention and thought we hope to, but we have examined it carefully enough to consider it valuable and learned. It is published by Frederick D. Linn & Co., Jersey City, N. J., from whom, we presume, copies may be had upon application.

FROM the author, Dr. Carl H. Von Klein, A. M., M. D., we have received, with his compliments, a copy of a short address delivered by him, by invitation, before the Ohio State Bar Association at their annual meeting December 30 and 31, 1884, at Columbus, O., on the subject of "Medical Jurisprudence in Divorce." We have read with care and interest this thoughtful and learned address, and we have had our mind awakened to a deeper sense of the vital importance of this neglected subject than we have previously enjoyed. The author maintains with learning and ability that medical jurisprudence should be resorted to with great care in divorce cases before the final decree is rendered. We only regret that he has given us no more upon the subject in this address. We reach the end long before we have any desire to do so. We hope that in the future we shall hear from him at length upon the same topic.

WE have received from Geo. A. Leavitt & Co., auctioneers, New York, the complete catalogue of the law library of the late Charles O'Connor, which will be sold at auction by them on March 13 and 14, and all orders to purchase will be executed free of charge by the auctioneers for the lawyers at a distance. This magnificent library, comprising five thousand volumes of the rarest and most valuable law books, will soon be scattered abroad over the continent, and it is almost with regret that we observe it. This catalogue is complete in every way and contains all needed information. It is well arranged and very neat, and it is a pleasure for us to see with what great care and skill the books have been grouped and classified for the greater convenience of purchasers.

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Supreme Court District of Columbia

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

Decided February 16, 1884.
The CHIEF JUSTICE and Justices MAC ARTHUR and JAMES sitting.

HENRIETTA C. KELLER
vs.
FRANCIS A. ASHFORD.

EQUITY. No. 6243.

1. A condition introduced in a deed signed only by the grantor that the grantee shall assume the payment of a certain promissory note, secured by a prior deed upon the property conveyed, is not binding upon the grantee unless the conveyance and its conditions are brought to his knowledge and he accepts the property thereunder.
2. Payment of interest on the note and the collection of the rents are not inconsistent with the theory that the grantee took the property under the supposition that it had been transferred to him merely as security for an indebtedness due him, especially when there is no evidence that he had any knowledge of the deed and its condition.

STATEMENT OF THE CASE.

In this case the complainant filed a bill in equity setting forth in substance :

1. That on the 17th day of August, A. D. 1875, a one Archie Thompson, being seized in fee of lot numbered five in a subdivision of part of square eight hundred and eighty-nine, by his certain deed of trust of that date, conveyed the said lot of ground together with its improvements, to one Martin M. Rohrer, in trust to secure his certain note for $1,500, payable three years after the date thereof, to the order of Abner B. Kelly, with interest at the rate of ten per cent. per annum until paid.

2. That on the 21st day of February, A. D., 1876, the said Thompson and wife conveyed the same lot above described to one William A. Gordon, in trust to secure his certain note for $2,000, payable in one year after the date thereof, with interest at the rate of eight per cent. per annum until paid, to the order of Moses Kelly, who endorsed he same to complainant, who is the present owner and holder of said note.

3. That afterwards, to wit, on the first day of January, A. D. 1877, the said Thompson and wife, by deed in fee, conveyed the said lot of ground, with its improvements (together with other lots in the same square), to Francis A. Ashford, the defendant to this bill, subject, however, to certain encumbrances resting thereon, to wit, the two encumbrances herein before mentioned, payment of both of which said defendant Ashford assumed, and for that purpose withheld and reserved from the consideration by him paid for said property so much thereof as was then an equivalent of, or was necessary to cancel and settle the said encumbrances.

4. That said defendant, Ashford, accepted said deed in fee, with its provisions imposing upon him the personal obligation aforesaid to pay said encumbrances, and by virtue thereof entered into possession of the property, and not only collected the rents and profits arising therefrom from the date of said deed until the sale made under the provisions of the first trust, but also paid interest on said first mortgage to the holder thereof, and likewise paid the taxes charged against the same.

5. That complainant through her agent made demand on said Ashford for the payment of the note secured as aforesaid and by her held, and that said defendant, whilst he did not deny his liability to pay the same, yet neglected so to do, and now refuses to pay the same.

6. That in pursuance of the provisions of the first trust, the trustee therein named, after previous advertisement, exposed to public sale said lot five, and, on the same day, sold the same to John C. Harkness, trustee, at and for the sum of $1,700, a sum which was insufficient to satisfy and liquidate the debt secured by said trust, by reason whereof the lien of complainant for the amount of her note for $2,000, and interest thereon, has become wholly extinct, a deed having passed from said trustee to the purchaser at said sale.

Wherefore complainant, being advised that the acceptance by said Ashford of the said deed in fee, imposing upon him and charging him personally with the payment of the encumbrances resting thereon at the time of his said purchase, and the further fact that he withheld from the purchase money or consideration paid for said property, so much thereof as was then necessary to settle and liquidate the said encumbrances, or

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was, in the negotiation involved in said transfer in fee, or in any manner credited with an amount equivalent to the said encumbrances by him assumed, was an appropriation by him of said part of said purchase money, or of the amount so credited, as aforesaid, to the use of complainant, and constituted a fund by him held in trust for her benefit, which this court will enforce in her behalf.

The bill concluded with a prayer, that a decree be made in favor of complainant against said Ashford for the amount of the note by her held and secured by the second trust, assumed as aforesaid by said Ashford, together with the interest thereon according to its tenor, besides costs.

Accompanying the bill was the deed from Thompson to Ashford filed as an exhibit. It was an ordinary deed, conveying the property in question, "subject, however, to certain encumbrances now resting thereon, payment of which is assumed by said party of the second part."

The defendant filed his answer, admitting the existence of the first trust and the sale thereunder.

He admitted also the execution of the deed to him, but denied that he ever assumed the payment of the two incumbrances mentioned, or that he for that purpose withheld and reserved from the consideration alleged in the bill to have been paid for the property so much thereof as was then an equivalent of, or was then necessary to cancel and settle the said encumbrances.

He denied that he accepted the deed with its provisions imposing upon him the personal obligation to pay said encumbrances, or that he ever accepted said deed in any way, and denied that by virtue of said alleged deed he entered into possession of said property. He admitted collecting the rents of the property, and also that he paid interest on the first encumbrance and taxes, but only under the circumstances hereinafter stated, and not in consequence of an acceptance of said deed with an agreement to pay either of the encumbrances mentioned.

He admitted that demand was made by the plaintiff's solicitor in this suit, Mr. Boarman, upon him for payment of the note, but averred that the demand was made many months after the deed to him was made. He avers that he did deny his liability for the payment of the note, and he informed said solicitor that he did not intend to pay it, and did not intend to keep the property. He denies that he ever in any way admitted, and does not now admit, any liability on his part to plaintiff, nor did said Boarman, in his earlier interviews with this defendant, insist or even suggest that the defendant was personally liable to the plaintiff on the encumbrance alleged to be held by him.

Further answering as to the matters referred to, he averred the truth to be as follows:

That in the month of February, 1877, and a month or more after the said deed had been recorded, Moses Kelly, mentioned in said bill, stated to this defendant that he, Kelly, had had conveyed to this defendant lots on H street, between Seventh and Eighth.

That although there was then an encumbrance on said houses, he (Kelly) thought the equity in said houses was worth something, and that he thought he would sell them in such a way as to pay the defendant some part of his (Kelly's) indebtedness to defendant, and told the defendant that he might collect the rents and apply them to the payment of the said indebtedness to defendant, but that it would be necessary for defendant to pay the interest due to Mr. Harkness on the note held by him which was secured on said property, as he, Harkness, was pushing for it.

This defendant accordingly paid to said Harkness $150 for interest then due, and in August, 1877, paid said Harkness the further sum of $75 for interest on said note. The defendant, in the meantime also paid some taxes on said property, which were in arrear, this defendant not knowing until after the said first payments were made that any other encumbrance was on the property. Said Kelly was at the time he told defendant said houses had been conveyed to defendant, and from thenceforth has been and still is, justly and *bona fide* indebted to defendant for money advanced and loaned to him,

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in a sum far exceeding the value of said four houses and lots; and defendant, being willing to receive payment of said indebtedness, so far as he could, by collecting the rents from said property and applying the same to the said debt due from Kelly to himself, collected said rents, or so much of them as he was able to collect from February, 1877, to the said sale to Harkness; but this defendant had no understanding or agreement with said Kelly, or with any one, that he would assume or would pay the said encumbrance of $1,500 on said property, or any other encumbrance thereon. And of the existence of the deed of trust to Gordon or the note secured thereby, the defendant had no knowledge, notice or intimation until eight or ten months after he was informed that the property had been conveyed to him.

That he has never seen, read, or heard read, the said alleged deed to him, or a copy thereof, nor was he ever aware that said alleged deed contained any clause or provision making him, in express terms or otherwise, assume the encumbrances therein, or requiring him to pay the same, until a short time since, when notified that such was the fact.

The only knowledge the defendant had of there being a deed to him or of the terms thereof, until long after the same had been recorded, was what he learned from said Kelly as aforesaid.

That defendant did not and does not know Archie Thompson or his wife, and never had any business relations with them, or either of them, of any kind. That no consideration moved from him to said Thompson or wife for said deed. That if any agreement was made by said Kelly with said Thompson whereby said property should be conveyed to this defendant, and that this defendant should assume and pay said encumbrances, which defendant denies, such agreement was unknown to and unauthorized by this defendant, and this defendant avers that it was not the intention of the said Thompson who executed said deed, or of the said Kelly at whose instance it was prepared, executed and recorded, that this defendant should be made to pay said encumbrances; and the defendant is informed, and so avers, that the said Thompson has hitherto, and still refuses to hold this defendant responsible for the payment of plaintiff's claim, or to bring action or suit against this defendant. The said Thompson, well knowing that the intention was to convey to defendant only the equity in said property without in any way making him personally liable for the debts secured on said property, and such defendant avers the fact to be, and he so understood the effect and purpose of the conveyance of said houses when he assumed to collect rents thereof.

When payment of the note alleged to be held by plaintiff was demanded of him, which was prior to the sale to Harkness, defendant refused to pay the same, informing the plaintiff's said solicitor that he knew nothing of the encumbrance represented by said solicitor until long after the said deed from Thompson and wife to defendant was recorded, and that he did not intend to hold the said property with the encumbrances thereon, and offered to convey all his interest therein to plaintiff without any consideration being paid by her therefor; which offer (as defendant has been informed) the plaintiff was willing to accept, but was prevented therefrom by said solicitor, although the interest and taxes, as aforesaid, paid by this defendant exceeded the rents collected by him, and he had derived no benefit or profit whatever from said conveyance.

That plaintiff (as defendant is informed), or her said solicitor, attended said sale, or knew that the same was to take place, and knowing, also, that defendant had refused to pay said note, and had informed said solicitor that he, defendant, did not intend to keep said house, said plaintiff neglected to take any means to protect herself against loss by reason of a sacrifice of said house and lot, and allowed the same to be sold at a great sacrifice, the same not bringing more than one-half its value—and this, although the plaintiff's said solicitor admitted that she had funds with which she could have taken up said debt held by Harkness. And the defendant is informed, and so avers, that plaintiff became the holder of said note long before, if at all, said pretended deed to defendant was made.

And further, that if the matters stated

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do give the plaintiff any cause of complaint against the defendant, the same is triable and determinable at law, and ought not to be inquired of by this court.

A replication was filed; both parties took testimony; and on the hearing the court below dismissed the bill; and the plaintiff appealed to the General Term.

W. D. DAVIDGE and W. W. BOARMAN for plaintiff.

APPLEBY & EDMONSTON for defendant.

Mr. Justice JAMES delivered the opinion of the court.

The parties to this cause have, we think, substantially agreed upon the law of the case; that is to say on the doctrine that if there was no acceptance of the condition introduced in the deed that Ashford as grantee should pay this debt, he was not bound to pay it although it was so specified in the deed.

It is not of any particular interest to go into the details of the testimony, but our conclusion after examining it carefully is:

First. That Dr. Ashford was no party at all to the original negotiation. He had no reason to know and no means of knowing that any such condition was introduced, nor did he even know that a conveyance was made to him by Thompson. Some time afterward he obtained his information from Moses Kelley, his father-in-law, who was indebtedto him, and for whom he was security in some matters.

It should be observed here that the only conflict of testimony is that of Mr. Boarman and Dr. Ashford, and that conflict relates to a matter scarcely material. Dr. Ashford is not contradicted by anybody as to the original transaction nor as to the character of his information from Moses Kelly. That information was to this effect: That Kelly told him he had given him some lots (he was not even then informed where the title came from) and gave him to understand that he thereby secured him. Kelly did not definitely state that he had given him these lots in payment, and inasmuch as there was no ascertainment between them at that time of the value of the lots, it is not to be presumed that it was in payment of a definite amount; we must, therefore, assume from this conversation that Kelly was intending merely to secure a liability.

Dr. Ashford paid interest on the encumbrances. It was perfectly natural that he should do just what any person who seeks to save his security must do: He collected the rents. It was consistent with the idea of security that he should do that also. But we do not find any transaction on his part accepting the condition in the deed to pay the debts secured by prior encumbrance.

Just when he obtained his information that there was a condition is not precisely ascertained. We are of opinion, however, that Mr. Boarman is more likely to be mistaken than Dr. Ashford as to having given him the information in the month of October instead of in the spring of the ensuing year. But on the whole that is not material for we are satisfied that Dr. Ashford did not accept this condition.

The bill does not proceed upon a promise of Dr. Ashford. For if the plaintiff relies upon a distinct promise, the remedy is an action at law. But the bill is carefully drawn on the theory that Dr. Ashford has made a contract with Thompson by which he reserved a part of the consideration, and that the amount so reserved constitutes a trust in his hands for the benefit of the plaintiff. But the evidence is that Ashford had no contract whatever as to what the consideration was to be with Thompson. The fact, therefore, that there was no understanding as to what the price of the property was to be, supports the theory that it was transferred through Kelly's instrumentality by way of security to Dr. Ashford.

The decree below is affirmed.

Innkeeper: Obligation to Receive Guest; Excuse of Want of food; Apprehension of Insult.—Mere apprehension of insult, is no excuse for an innkeeper's refusal to receive a person as guest without circumstances and facts justifying such apprehension. Want of food is no excuse for an innkeeper's failure to provide entertainment for a traveler, unless there be good excuse for such want. This rule applies to an innkeeper who is not licensed by statute, as well as to those who are. [Atwater v. Sawyer, S. C. Me., Dec. 27, 1884.]

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Earnest or Part Payment.

The case of Howe v. Smith, 53 Law J. Rep. Chanc., 1,055, reported in the December number of the *Law Journal Reports*, is of great interest, and brings to light much learning on an unexpected subject. The question arose out of a state of facts which must have often occurred before, but it appears not to have been previously decided. The plaintiff in the action had paid to the defendant £500 as "a deposit and in part payment of the purchase money" under a written contract for the purchase of land for £12,500. The contract contained a clause allowing the vendor to resell on default by the purchaser, charging the deficiency to him. The vendor did resell at the same price. Meanwhile, the purchaser sued for specific performance of the contract, but both Mr. Justice Kay and the Court of Appeal held that he had been guilty of so much delay that he was not entitled to specific performance. At the last moment, he asked to have the deposit of $500 returned to him, and his pleadings were amended accordingly. This aspect of affairs so far puzzled the Court of Appeal that they found it necessary to take time to consider. Lord Justice Cotton explains the absence of authority on the point, on the ground that such a claim is "essentially a common law claim, and one which has not arisen in equity." No doubt equity cases are more frequently reported than common law cases, but one is surprised that what would seem a difficulty of such common experience should so little have been dealt with in the common law reports. However, we have now an exhaustive exposition of the subject from the three Lords Justices. Lord Justice Cotton deals with the matter from the point of view of equity, Lord Justice Bowen from the common law point of view, while Lord Justice Fry lays his knowledge of the civil law under contribution, and in a written judgment disposes of the matter in all its bearings.

The judgment of Lord Justice Fry, as the fullest, deserves to be made the basis of the decision. The learned judge passes in review three reported decisions on the point. Two of these favor the view that the deposit is not forfeited, and the third that it is. In Palmer v. Temple, 8 Law J. Rep., Q. B., 179, it was held that when the purchaser made default, and the vendor resold the estate, the deposit was not forfeited, Lord Denman pronouncing the deposit to be "not an earnest to be forfeited, but part payment." In that case there was a special clause providing for the payment of £1,000 damages by a defaulting party. In Ockenden v. Henley, 27 Law J. Rep., Q. B., 361, the question was, whether credit ought to be given for the deposit in ascertaining the deficiency on a resale, and Lord Campbell said that "it is well settled by our law, following the rule of the civil law, that a pecuniary deposit upon a purchase is to be considered as a payment in part of the purchase money, and not as a mere pledge." The Court of Appeal approve the result of this case, but not the reasoning by which Lord Campbell arrived at it. On the other hand, in the recent case of Collins v. Stimson, 52 Law J. Rep., Q. B., 440, Baron Pollock laid down that "where the contract goes off by default of the purchaser, the vendor is entitled to retain the deposit." To these cases must be added Hinton v. Sparkes, 37 Law J. Rep., C. P., 81, in which the cases in favor of the deposit being part payment were reviewed and apparently approved, but in which the decision was against the defaulting party on the express words of the contract. Of higher authority than any of these cases was a decision of the Court of Appeal in Ex parte Barrell, In re Parnell, 44 Law J. Rep. Chanc., 138, in which Lord Justice James said: "The money was paid to the vendor as a guarantee that the contract should be performed. The trustee refuses to perform the contract (he had in fact disclaimed it), and then says, 'Give me back the deposit.' There is no ground for such a claim." It is curious to observe how confidently the opinions both ways are expressed, and generally without much reference to the contrary opinions. The only decision binding on the Court of Appeal was that in which Lord Justice James took part; but such was the conflict of opinion that it was well to take the opportunity of examining the matter thoroughly. Lord Justice Fry begins with the civil law, and, *pace* Lord Campbell, shows clearly that the *arra* or earnest was forfeited on non-performance by the purchaser in default of express words, and that the fact of its being also called part payment did not alter this result. Fortified in his own opinion by this authority, Lord Justice Fry proceeds to examine the question, what is the point of time when the earnest must be taken to be forfeited? Before the Judicature Act he says that this was the day stipulated for the completion of the purchase, but now that law and equity are one, it is within a reasonable time from the day stipulated. The learned judge, we are glad to see, thus takes the liberal view of the interpretation of section 25 of the Judicature Act, 1873. Sub-section 7 of that section provides that "stipulations in contracts as to time or otherwise shall receive in all courts the same construction and effect as

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they would have heretofore received in equity." The narrow construction adopted by some judges, even in the Court of Appeal, of the Judicature Acts would have made these words apply only to actions for specific performance, and not to actions for damages. In order to dispose of the whole matter, Lord Justice Fry proceeds to deal with the effect of the clause in the contract allowing the vendor to resell in case of default by the purchaser. If the vendor resell under this clause the Lord Justice is clear that he must give credit to the purchaser for the deposit in case there is any deficiency in the resale. If, however, he rescind the contract and sell as owner, independently of his right to resell, he need not give credit for the deposit as part payment. The learned Lord Justice does not say what step he must take in practice in order to show that he is reselling, not under the contract, but independently of it. We presume that he is bound to give notice to the purchaser that he rescinds the contract. The distinction between the rights of the vendor by resale under the contract, and his rights by resale generally, appears a refined one. The vendor, if he rescind the contract, may retain the deposit as an "earnest," but is not bound to give credit for it as "part payment," although if he does not rescind the contract, but resell under the power, he must do both. But if he rescind the contract, why should he not return the deposit? He can hardly be allowed to rescind the contract for one purpose and not for another. This distinction of Lord Justice Fry, upon which his colleagues do not comment, does not appear to us to be sound.

The decision strengthens and clears the law in a very important particular. For the future deposits must be looked upon as *prima facie* liable to be forfeited, and the character of "part payment" may be imposed upon them without destroying their other and more important character. If there is any other intention in the mind of the parties, it must be expressed in the contract. The decision appears to be juct and convenient.—*Law Journal.*

Measure of Damages in Case of Illegal Distraint by Tax Collector.—Where goods were properly seized by a collector for non-payment of taxes, and the distress became void for an irregularity afterwards occurring in the officer's proceedings, the measure of damages, in an action of trespass for the goods by the owner against the officer, is the value of the property less the amount applied to the payment of the tax. [Cressy v. Parks, S. C. Me. Dec. 19, 1884.]

Falsity of Pretences.

No more curious chapter, illustrating the casuistry of the law, could be written than one displaying the distinctions taken in relation to the crime of obtaining property by false pretences. Nor, among the many singular cases on that subject, would The Queen v. Powell be deemed the least remarkable. It would, indeed, have been only the more remarkable had the five learned judges by whom it was decided agreed in their decision; and as it is, we fell by no means confident that the majority were clearly right, and the minority manifestly wrong. What were the facts? What were or were not facts, was just what gave rise to the difficulty. For, of course, the pretence must be of an existing fact, while it need not be made by actual words; and it should be remembered that, while the pretence must be false to the knowledge of the person making use of it, it will not be the less a false pretence, because a person of common prudence might easily have detected its falsehood by inquiry. Woolley was guilty because he told a member of an Odd Fellows' Lodge that he owed the lodge 13s. 6d., and thereby, as the secretary, obtained that sum from him, although by an easily made inquiry it would have been ascertained that only 2s. 2d. was due: 1 Den., 559. And you may have fallen within the meshes of the criminal law by having obtained money from a lady by threatening her with an action for breach of promise of marriage—a promise she made to you, but an action you could not maintain, as you happened to be a married man; but then you had *impliedly* pretended that you were unmarried: R. v. Copeland, C. & M.; R. v. Jennison, L. & C., 157; R. v. Cooper, 13 C. C. C. The case in hand, however, is The Queen v. Powell, reported in this mon h's *Law Journal*, and to it we shall proceed without further digression.

Walter Powell was agent to an insurance company, and it was his business to collect the annual premiums from persons insured in the company. David Vellam was so insured. Walter collected from David, in 1883, the annual premium then due for the renewal of David's policy, and in acknowledgment gave an informal signed receipt. But the wily Walter did not account to the company for this premium; he appropriated it, and notified to the company that the policy had not been renewed. The company thereupon treated the policy as lapsed. Was it lapsed? Unquestionably not—the payment was valid as against the company. But the controversy turned on what afterwards followed. On the 7th of April, 1884, Powell called on Vellam

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for the premium due on the 1st of April. Vellam, unaware that the company had treated the policy as lapsed, replied that he was not able to pay then, but that he hoped to be able to do so before the 15th. He did not do so; and on the 21st, the days of grace within which the premium had to be paid, expired. Vellam, knowing this, and that by the company's conditions his policy lapsed accordingly, was called on by Powell again on the 21st, who told him that payment then "would be effectual," and Vellam also understood that Powell was "to apply to the company to let the policy go on." On those inducements he thereupon paid the annual premium to Powell. Now, it is needless to discuss whether or not Powell could have been indicted for falsely representing that he would obtain the approval of the company to the renewal of the policy: see R. v. Lee, L. & C., 309, 9 C. C. C., 304; R. v. Speed, 46 L. T., N. S., 174; R. v. Giles, 34 L. J. M. C., 50. The charge in the actual indictment was that, on the 21st of April, 1884, he represented the policy to be in full form and existence, and not lapsed nor become void. Coleridge, C. J., Huddleston, B., and Mathew, J., held that there was evidence for the jury in support of this indictment; while Grove and Manisty, JJ., held that there was no such evidence—"a curious example of those instances in which the same state of facts present themselves in different aspects to different minds," as the Lord Chief Justice truly observed.

This is how the facts presented themselves to Lord Coleridge: On the 7th of April Powell asks for the premium, in truth supposing that the policy was not in existence; and the mere calling for the premium on it was cogent evidence of a representation that the policy was alive. No doubt, on the 21st of April the conduct and demeanor of Powell was not in terms a repetition of the representation made on the 7th; "but it must be taken to have been so in effect, because if no representation had been made on the 7th, the visit on the 21st would have been meaningless." Then, when, on the 21st, Powell tells Vellam that the payment, made on that day, will be effectual, what, under the circumstances, does that expression mean? "Surely, without straining words, and by the light of common sense, it is equivalent to saying, 'you have your policy good up to the 7th; if you pay this money you will have a good policy, and will continue to be insured in the company.' Powell also told Vellam it was necessary he should communicate with the office. It appears to me perfectly clear that under these circumstances a false pretence was made. The conduct and statements of Powell on the 21st were representations that the policy was a good one, and that payment of the premium would be effectual to keep it in force, whereas the policy had for a year been treated by the company as lapsed. That fact was concealed from Vellam by Powell, and on the faith of the representations so made to Vellam he parted with his money."

But, was it not true, that on the 7th the policy was a good one; and on the 21st was it not known to Vellam, equally with Powell, that it had lapsed? And in the light of these circumstances, what could be the meaning of Powell's expression on the 21st, but that the payment "would be effectual," when he applied "to the company to let the policy go on," by means of the company allowing it to be renewed; and with such an object in view, could his visit on the 21st be said to be "meaningless?" If the occurrences of the 21st had taken place on the 15th, would Powell have made a false pretence? There was but one circumstance different on the 21st—that by Vellam's own default his policy had then lapsed, to his own knowledge. "I have no doubt," said Manisty, J., "that Vellam paid the £3 2s. 8d. in the hope that Powell would obtain the director's consent to renew the policy; but that is not the false pretence charged in this indictment. Were we to hold Powell liable in such a case as this, we should run the risk of convicting an agent who, *bona fide*, believed that the company would accept a payment after date." "Powell," said Grove, J., "represented that the payment on the 21st would be 'effectual,' and so it would when Powell applied to the company to let it run on, as Vellam understood he would. What can be more explicit than this? Is it a false pretence? How can the false pretence that the policy was alive be sustained when both parties knew that the policy had lapsed?

The evidence does not show that the policy was alive, but that it would be preserved if he made application to the company. How then could Powell be said either in law or in good sense to obtain the money on the false pretence that the policy was in full force?" To his mind, what occurred on the 7th could not be introduced, because the 21st was the date laid in the indictment. The Lord Chief Justice, on the other hand, as we have seen, relied on what then occurred, as if Powell had then made a false pretence. But the policy was then alive; and if Vellam had tendered the premium direct to the company they should have received it. Powell, their agent, received it, and did no wrong thereby; but he asked for it too; and was that a wrong?

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He had not paid over the premium for 1883, but was not indicted for embezzlement; nor was he indicted for embezzlement on the present occasion. Had he been so indicted, we should not cavil with his conviction; but with his conviction for the offence charged, we cannot express unhesitating satisfaction. —*Irish Law Times.*

A Man Without a Country.

This personage, scarcely known to us except in fiction, has appeared in the courts of France and Germany, much to the perplexity of the civilians.

The persistent tradition in the jurisprudence of the nations of continental Europe which follow the Roman law, that jurisdiction is co-extensive only with race or nationality, rather than—according to the doctrine of the English speaking peoples—with territorial sovereignty, has long been controverted as a long way behind the present advances of civilization, but has been with great consistency adhered to, both in legislation and in jurisprudence. It is a principle which introduces numerous perplexities into the otherwise sufficiently perplexing subject of the conflict of laws, particularly with reference to marriage and divorce.

Several cases now before the courts of Germany and France will put to the test the pertinacity with which continental jurists adhere to this rather antiquated principle. These cases turn on the jurisdiction of the courts of a nation to grant a divorce in a case not falling within the limit of the present rule.

Indicated in a general way, the rule of the French courts is to decline jurisdiction of controversies between foreigners unless the parties consent, and in the case of litigation in regard to the status of a person, as, for instance, in divorce or an action for separation, the court will not act; indeed, according to the French law, it is held, cannot act unless the husband is a Frenchman.

In a recent case, the wife complained of her husband's maltreatment. She was a Frenchwoman, but, because her husband was a German and, although long a resident in Paris, had not become a Frenchman, she was obliged to sue in a German jurisdiction. There her action was dismissed because the husband was no longer subject to German law. In fact, he had lost his original nationality and not acquired a new one, and according to the continental rule it appears that he is not subject to any jurisdiction in divorce.

It seems strange that cases of this class should not have attracted attention before now, for there are not a few instances in which, by the strict rules of continental Europe, a man may lose his rights of nationality in one country without having gained any in another, and such capitals as Paris abound in these instances of men without a country. It seems altogether probable that sooner or later the French code, at least, will be modified by introducing the rule domicil instead of nationality as a test of jurisdiction, as was long since done in Anglo American law. —*N. Y. Daily Register.*

Circumstantial Evidence.

A Nova Scotia paper, the *Halifax Record*, in a recent issue, relates a remarkable case of circumstantial evidence which has just occurred in the English county of Middlesex, in which one George Manners came near suffering the extreme penalty of the law for the murder of Edmund Lascelles, when he was entirely innocent of any crime. It appears that Manners was engaged to be married to Lascelles' sister Mary. Lascelles was a morose and sullen fellow, and he objected to the attentions of Manners towards his sister; the two men had an altercation over the matter, and Manners was overheard to say: "Next time, Mr. Lascelles, I shall not ask for your hand; I shall take it." Upon this he departed, and was soon followed by Lascelles.

About eleven o'clock that evening two men knocked at the door, bearing in their arms the dead body of Lascelles, who had been murdered with a knife and a bludgeon. Following them was Manners, with hand and clothing blood-stained. The dead man's right hand, on which he had worn a sapphire ring, had been cut off and was no where to be found.

Manners was arrested. At his trial a farm laborer testified that as he was nearing the park gate Manners turned towards him, exclaiming: "Quick! quick! help! Mr. Lascelles has been murdered! He found that the murdered man's hand had been cut off at the wrist, and asked him if he knew who did it. He said: "How horrible!" The laborer proposed looking for the hand, but Manners objected on the score of losing time, and that the doctor must be sent for. He said to Manners it was a desperate struggle, and Manners said Lascelles was a very strong man, but not quite as strong as himself. Manners said nothing more, except, "Who will break it to his sister?" During the trial the sister had to testify to the last interview held with her brother, and the peculiar words addressed him

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by her lover. Manners was thereon found guilty and sentenced to death.

His friends prosecuted the search for the missing hand, which was at length found in the cellar of a barn belonging to a man named Parker. There was with it a blood-rusty knife. Parker admitted his guilt. Lascelles had met him that night, and, as was his habit, began taunting and insulting him. In a fit of anger Parker killed him with a stake, and in order to remove his ring, cut off the hand at the wrist and took it home with him. Manners was thereupon released, and married his sweetheart.—*American Law Journal.*

Supreme Court of Oregon.

WHITE *vs.* RAYBURN.

Filed January 5, 1885.

Hearsay Evidence: Statements of Attorney to Client; Res Gestæ.—The payee of a note, in an action thereon, cannot testify as to statements made him by his attorney with reference to the manner in which the note was obtained, and the consideration therefor. Such evidence is hearsay, and forms no part of the *res gestæ.*

Appeal from a judgment of the Circuit Court for Benton county, entered in favor of the plaintiff. The opinion states the facts.

THAYER, J.: This appeal is from a judgment of the Circuit Court for the county of Benton, entered in an action in said court in favor of the respondent, and against the appellant. The action was upon an alleged promissory note, claimed to have been lost or destroyed. The appellant, by her answer therein filed, denied the execution of the alleged note, or that there was any consideration for such note. The case was tried by the court, and a jury duly impanelled; upon the trial, the respondent, in order to maintain the issues upon his part, called Sol King, the sheriff of Benton county, who gave testimony tending to show that he levied an execution issued upon a judgment in an action in a justice's court, wherein the respondent was plaintiff, and one John Blake was defendant, upon a debt alleged to be owing from the appellant to the said Blake. That said execution was subsequently returned to said court, by direction of the attorney for the respondent. Said sheriff also testified that the appellant admitted to him that she had made such a note to the respondent, but that she refused to pay it, unless she got the note. The respondent then offered himself as a witness, and testified that he authorized his attorney, James A. Yantis, to arrange the matter of said Blake's debt to him with the appellant in any manner satisfactory to all parties; said witness was then asked this question: "State what report Yantis made to you under this authority you gave him? To which question appellant's counsel objected. The court overruled the objection, and said counsel excepted to the ruling. The witness, in answer to the question, said: "He wrote to me that he had taken her note for $95.10, and I told him to collect it, and wrote him to proceed in the matter, as I needed money." The appellant has assigned several rulings of the court as grounds of error, but it is unnecessary to examine any of them other than the one overruling this objection. We think this was error. It was an attempt to prove by the statement of the respondent's own attorneys, made to the respondent, a material issue in the case. The question called for a statement of facts in reference to what Yantis had done in arranging the matter of Blake's debt with the appellant, and the answer of the witness was clearly responsive to the question.

It went to the jury, and if they believed it to be true, as they would be very likely to, it was decisive of the case. At all events, they returned a verdict for the respondent, and, if the question was competent, I do not see how they could have done less. It established the making of the note, and a good consideration therefor, which were the only issues between the parties. The counsel for the respondent claimed upon the argument that the question was proper, because it went direct to the *res gestæ;* but the *res gestæ* could not be proved by that character of evidence; it was no more than hearsay. Had Yantis been present at the trial, he could have testified to the transaction; could have told what arrangement he made with the appellant regarding the matter; but his statement to his client was wholly inadmissible to prove it. If the due execution of the note had been established, and it had been necessary to prove that there was a consideration for the making of it, the respondent, in order to prove the consideration to have been his release of his debt against Blake, could have properly testified that such release was given in consequence of the report made to him by his attorney, that he had taken appellant's note with such an understanding. A party may frequently introduce his own acts and declarations in evidence as a part of the *res gestæ*, but the principal fact must be established by direct proof. The respondent's counsel may disclaim against having had any intention to prove the making of the note, by the answer the witness gave to the said question, and insist that he sought by it no such response. Such may have been the fact, but I fail to understand why that response was not a direct

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answer to the question. A debt due from the appellant to Blake had been levied upon by an execution upon a judgment in favor of respondent against Blake, and the respondent testified that he had authorized his attorney, Yantis, to arrange the matter satisfactory to all parties. He is then asked what report his attorney made to him under this authority he had given him, and he said his attorney wrote to him that he had taken appellant's note, etc. Besides, the counsel accepted the answer as pertinent to his question. If it were not the reply he was attempting to elicit, he should have then disclaimed it. The appellant's counsel could not be supposed to have known, but that was the very object of the inquiry. Again, it is not the duty of a counsel who interposes an objection to a question asked a witness in his testimony at a trial, to object also to the answer the witness gives. The counsel who puts the question should insist upon a responsive answer to it, and if the witness fail to comprehend the particular point of the inquiry, the question should be so shaped as to make it evident. It often occurs in the trial of issues of fact that testimony may be introduced for certain purposes which would be incompetent for others. In all such cases the jury should be made to understand the peculiar relevancy and importance of testimony of that character, and the purposes for which it can be considered. In the case under consideration, it is not apparent how the testimony offered upon the matter suggested could, in any event, have been admissible. It certainly was not for the purpose of establishing the existence of the alleged note, and I cannot see, from the record, how the jury could have considered it for any other purpose. If the respondent introduced it in any other view, or for any other purpose, he is unfortunate, perhaps, in not being able to make it so appear. The judgment will therefore be reversed, and the case remanded to the court below for a new trial.—*West Coast Reporter.*

NOTES OF RECENT DECISIONS.

Corporation: Subscribers not Liable Until the Whole Capital Stock is Subscribed.—There is no liability on a subscription to the stock of a corporation, the amount of whose capital stock is fixed, until the whole amount of the stock is subscribed. A subscriber to the capital stock of a proposed corporation when the full amount of stock required by law to be taken is not subscribed, cannot be held liable individually for a debt of such corporation, unless for some cause he has estopped himself from alleging that the whole of the fixed capital stock was never subscribed. Temple v. Lemon, S. C. Ill., Ottawa, 1884.

Railroad Corporation: Injunction to Restrain Interference with Facilities of Express Company in Case of Inter-State Railway.—An injunction may be granted by the Circuit Court of the United States to restrain a railroad corporation, one part of whose line is in a foreign country and the other in a State, from interfering with the facilities enjoyed by an express company, and from refusing to receive and transport its messengers and express matter for reasonable and just compensation over that part of the road within the State. [Southern Express Co. v. St. Louis, etc., Ry. Co., 10 Fed. Rep., 210, followed; Fargo v. Redfield, U. S. Ct. C. Vt., D. Nov. 29, 1884; 22 Fed. Rep., 373.]

1. *Landlord and Tenant: Estoppel; Sale of Landlord's Title.*—Where the title of a landlord is sold by the sheriff to enforce the lien of a judgment subject to which the landlord acquired his estate, and the purchaser, at the sheriff's sale, claims rent from the tenants, the latter are not estopped, in an action by the landlord for the same rent, to set up the termination of the landlord's title.

2. *Ibid: Ibid; Process against Landlord's Grantor.*—In such a case the ordinary estoppel of the tenant to deny his landlord's title does not apply, although the sale has been on process issued not against the landlord but against his grantor. [Smith v. Crosland, S. C. Penn., May 26, 1884.]

Trespass: Against Tax Collector; Legal List Necessary to Justification.—A collector's justification must show a legal tax, a legal list, and that his authority was legal. [Cove Spring Iron Works v. Cone, S. C. Vt., Feb. Term, 1884.]

The Courts.

U. S. Supreme Court Proceedings.

MARCH 2, 1885.

Hiram Y. Smith, of Des Moines, Iowa; George S. Converse, of Columbus, Ohio; A. K. McClure and Rufus E. Sharley, of Philadelphia, Pa.; James E. M. Bowen, of Washington, D. C.; T. H. Kelly, of Cincinnati, Ohio; F. M. Huffaker, of Virginia City; Wm. Warner of Kansas City, Mo.; Truman C. White, of Buffalo, N. Y; Everard Bierer, of Hiawatha, Kan.; George A. Maddell, of St. Louis, Mo.; and O. O. Cottle, of Buffalo, N. Y., were admitted to practice.

No. 182. Elisha Hyatt et al., etc, v. the Vincennes National Bank, etc., et al. Decree affirmed with costs. Opinion by Mr. Justice Blatchford.

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No. 1001. The United States v. Edward L. Jordan. Judgment affirmed. Opinion by Mr. Justice Blatchford.

No. 15. Allen Campbell McArthur et al. v. David H. Scott, administrator, &c., et al. Decree reversed with costs and cause remanded for further proceedings to be had therein in conformity with the opinion of this court. Opinion by Mr. Justice Gray, Mr Chief Justice Waite and Mr. Justice Harlan dissenting. (Mr. Justice Matthews, having been of counsel, did not sit in the case or take any part in the decision.)

No. 1134. John E. Parsons et al., executors, etc., v. Forester Wilkinson et al. Judgment reversed with costs and cause remanded with directions to award a new trial. Opinion by Mr. Justice Gray

No. 154. Edward B. Chase v. Abijah Curtis and Henry DeCoppet. Judgment affirmed with costs. Opinion by Mr. Justice Matthews.

No. 187. Samuel T. Morgan, administrator, d. b. n., etc., et al., v. John C. Hamlet et al. Decree affirmed with costs. Opinion by Mr. Justice Matthews.

No. 907. The St. Louis Iron Mountain & southern R'y Co. v. J. H. Berry et al., &c Decree affirmed with costs Opinion by Mr. Justice Matthews.

No. 1157. Frederick Prentice v. Orzona P. Stearns. Judgment affirmed with costs. Opinion by Mr. Justice Matthews.

No 1186. The Chicago & Northwestern R'y Co. v. Emanuel H. Crane. Judgment affirmed with costs. Opinion by Mr. Justice Matthews.

No. 526 Junius S. Morgan et al, &c., v. The United States. No. 527. The United States v. The Manhattan Savings Institution. No. 528. Louis A. Von Hoffman et al., &c. v. The United States. And No. 529 The United States v. The Manhattan Savings Institution. Judgments reversed and causes remanded with directions to enter a judgment in conformity with the opinion of this court. Opinion by Mr. Justice Matthews.

No. 153. Isaac N. Pearce et al., v. Chas. I. Ham. Decree affirmed with costs and interests. Opinion by Mr. Justice Woods.

No. 167. Maggie R. Flagg et al. v. Samuel Walker. Decree affirmed with costs and interest. Opinion by Mr. Justice Woods.

No. 155. Charles E. Blake v. The City and County of San Francisco et al. Decree affirmed with costs. Opinion by Mr. Justice Woods.

No. 1245. Emma V. Brown, administratrix, &c., v. The United States. Judgment affirmed. Opinion by Mr. Justice Woods.

No. 749. Frances W. Boyer v. Daniel Boyer et al., &c. Judgment reversed with costs and cause remanded for further proceedings to be had therein, not inconsistent with the opinion of this court. Opinion by Mr. Justice Harlan. (Mr. Chief Justice Waite did not sit in this case nor participate in its decision.)

No. 184. The Chicago Life Insurance Co. v. Thomas B. Needles, auditor, &c. Judgment affirmed with costs. Opinion by Mr. Justice Harlan.

No. 136. The Commissioners of Buncombe county et al. v. Vincent R. Toumey et al. Decree affirmed with costs. Opinion by Mr. Justice Harlan.

No. 185. Benjamin F. Camp v. The United States. Judgment affirmed. Opinion by Mr. Justice Harlan.

No. 74. Frank Ayers et al. v. A. E. Watson. Judgment reversed with costs and cause remanded with directions to grant a new trial. Opinion by Mr Justice Bradley.

No. 1012. The Provident Institution for Savings, &c.. v. Mayor, &c., of Jersey City. Decree affirmed. Opinion by Mr. Justice Bradley.

No. 97. The Union Pacific R'y Co. v. Andrew Ryan, Marshal, &c. Decree reversed with costs and cause remanded with instructions to enter a decree in favor of the complainant in conformity with the opinion of this court. Opinion by Mr. Justice Bradley.

Nos. 1213 and 1214. The Artificial Stone Paving Co v. Charles A. Molitor. Dismissed with costs and remanded to be proceeded with in accordance to law. Opinion by Mr. Justice Bradley.

No. 122. The Winona and St. Peter R. R. Co. v. A. H. Barney et al. Decree reversed with costs and cause remanded for further proceedings to be had therein, in coeformity with the opinion of this court. Opinion by Mr. Justice Field.

No. 158. Joel B. Earhardt v. Anthony Boaro et al. Judgment reversed with costs and cause remanded with directions to award a new trial. Opinion by Mr. Justice Field.

No. 159. Same. Decree reversed with costs and cause remanded, with directions to restore the injunction until the final determination of the action at law between the same parties. Opinion by Mr. Justice Field.

No. 756. Samuel A. Pugh v. Henry S. Davis. Decree affirmed with costs. Opinion by Mr. Justice Miller.

No. 1100. Cornelius Gumbel v John R. G. Pitkin, marshal, &c. Motion to dismiss or affirm denied. Opinion by Mr. Justice Miller.

No. 67. The Kansas Pacific R'y Co. v. Lewis Dunmeyer. Judgment affirmed with costs. Opinion by Mr Justice Miller.

No. 7. Original ex parte. In the matter of Clinton B. Fiske. Writ of Habeas corpus granted. Opinion by Mr. Justice Miller.

No 156. Francis Dodge et al. v. Thomas Knowles Resubmitted on printed argument by J. H. Gordon, esq., for appellant, no counsel appearing for appellee.

No. 109. Charles E Schmieder et al. v. Hiram Barney, late collector, &c. Judgment affirmed with costs. Opinion by Mr. Chief Justice Waite.

No. 958. The City of St. Louis v. John Q. Myers. Dismissed for the want of jurisdiction. Opinion by Mr. Chief Justice Waite.

No. 1085. Alfred Richards et al. v. Brooke Mackall, jr. Motion to dismiss denied. Opinion by Mr. Chief Justice Waite.

No. 225. The Windsor M'f'g Co. v. The Steam Stone Cutter Co. Decree affirmed with costs per stipulation.

No 509. Russell L. Jones et al. v. same. Affirmed with costs per stipulation.

No. 271. The Steam Stone-Cutter Co. v. The Windsor Mfg. Co. Dismissed, costs to be paid by appellant.

No. 828. Joseph Davis, collector, &c., v. The United States, ex rel., Austin Corbin et al.

MARCH 5, 1885.

John C. Kennedy, of Boston, Mass.; Lewis W. Borton, of Clyde, Kan.; Samuel Wood and Thomas L. Napton, of Butte City; Joseph K. Toole, of Helena, Mon. T.; Michael Jacobs, of New York City; John G Reeves, Lancaster, Ohio and Charles A. Sumner, of San Francisco, Cal., were admitted to practice.

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SUPREME COURT OF THE DISTRICT OF COLUMBIA
GENERAL TERM

March 2, 1885

Hopp v Viegel Decree signed

B & O R. R. Co v. Wetzel. Motion to quash execution proceedings argued.

S eer v. Cuyler On hearing.

March 5, 1885

B & O R. R Co v the District of Columbia. Injunction prohibiting defendant from interfering with laying tracks of plaintiff on Maryland avenue across Fourth street.

March 6, 1885

Spear v. Coyle. On hearing.

IN EQUITY.—New Suits.

Feb. 28, 1885.

9348 Joseph B. Bryan et al v George O. Miller et al Injunction. Com sol, E. H. Thomas.

9349 James A. King et al. v. John W. King et al. To sell. C m sol. J. H. Saville.

9350. P. J. Clarke v. The Washington Gas Light Co Com sols, Bennett and Stockbridge

9351. Same v. Washington Brick Machine Co Injunction. Com sols, same.

9352. Samuel G Painter et al. v J. H. Copperidge. Injunction. Com sol, H. W Garnett.

March 3, 1885.

9353 Hannah Neff v. Horatio Maryman et al. To substitute trustee. Com sol, I. Williamson

9354 Sarah E. Herbert v Wash B Williams et al. To approve contract Com sol, E H. Thomas

9355 P. J Clark v. J. L. Sutherland. Injunction. Com sol, J. R. Bennett.

CIRCUIT COURT.—New Suits at Law.

Feb 27, 1885

25091. Horace S. Cummings v. George C. Chipman Note, $150 Piffs attys, Crittenden & Mackey.

25092. Netley Anderson v Charles Losekam. Damages, $1205. Piffs attys, Garnett and Robinson.

25093. George M. Wheeler et al v George T Dearing Replevin. Piffs atty, George F. Appleby.

March 2, 1885.

25094. William L. Brown v. John G. Thompson. Note, $1000. Piffs atty, W. F. Mattingly.

25095 Henry S Davis v George F Timms Acct., $1500 Piffs attys, Riddle, Davis & Padgett

25096 John Wanamaker v. Leutia P. Cake Note, $164 71. Piffs atty, F W Jones.

25097. White, Hents & Co v. John Weaver. Notes $183 50.

March 3, 1885

25098. Horace F. Page v. Pullman Palace Car Co. Certiorari. Defts atty, W A. Cook.

March 5, 1885.

25099. Robert Leitch & Sons v. Wm Z Partello. Note, $90. Piffs atty, John Ridout.

25100. Same v Wm. H Sincell. Acct, $80. Piffs atty, same.

25101. W. K. Carson & Co. v George A O'Hare. Acct., $217 88 Piffs atty, Birney & Birney.

25102 Philip R Vogel, jr., v. John O. Guethler Note, and acct, $177. Piffs atty, H W. Garnett

March 6. 1885.

25103. George Truesdell v. Lewis Reeves et al. Judg't of Justice Hall, $61 95.

March 7, 1885.

25104 Thomas E. Young v Wm. A Young. Trover, $3000 Piff- atty, W. Willoughby

25105 Jeremiah T O' onnell v Thomas P. Jacobs Damages, $1500 Piffs atty, J McD Carrington

25106. Bateman & Co. v George W. Cassidy. Notes, $1083.50. Piffs atty, C Thompson, jr.

PROBATE COURT.—Justice Hagner.

March 6, 1885

Estate of John W. Tucker. Petition asking that letters be issued to Albert F. Fox.

An examplified copy of the will of the late James H. Anthony, of Bristol county, Mass., has been filed with the register.

Estate of Eliza Young. Order of publication issued

Estate of James H. Causten. Order of publication issued

Estate of David C. Ralston. Order appointing A. A. Lipscomb administrator.

Estate of John F. Lee. Letters testamentary issued to Eleanor Ann Lee and bond fixed at $6,000

Estate of Reuben A Bacon. Letters testamentary issued to Robert M Colburn; bond, $15,000

Estate of Jane Duncan Order appointing Mary Marks administratrix; bond $240

Estate of Elmore W Tuttle. Answer of the administrator to rule to show cause.

Estate of Caroline E. Newkirk Letters of administration granted B. F. Evans, and bond fixed at $200.

Estate of Alfred Falconer. Renunciation of James Campbell as one of the executor.

In re Agnes, Daniel, and John C Beaumont Order appointing Fannie S. Beaumont guardian with penalty bond of $3,000.

Estate of Florence Murray Letters testamentary issued to John Marbury, jr., and bond fixed at $3,600

Estate of Wiley Lane Order of publication issued

Estate of Horace Capron Letters and colligendum granted Margaret Capron, and bond fixed at $ 5,000.

Estate of Joseph W. McCuskie Response of J. D. Shannon, showing cause why letters of administration should not be issued to James P Hambleton.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 6th, 1885.

In the matter of the Estate of John W. Tucker, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Mollie Weaver, for appointment of Albert F. Fox as Administrator.

All persons interested are hereby notified to appear in this court on Friday, the 3d day of April next at 11 o'clock, a. m, to show cause why Letters of Administration to Albert F. Fox on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court ALEXANDER B. HAGNER, Justice.
Test 10 H. J. RAMSDELL, Register of Wills.
H. B MOULTON, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 6th, 1885.

In the matter of the Estate of James H. Causten, late of the District of Columbia, deceased.

Application for Letters of Administration d. b n., c. t a., on the Estate of the said deceased has this day been made by Josephine Young and Rebecca E. Young for the appointment of Thomas E Waggaman

All persons interested are hereby notified to appear in this court on Friday, the 3d day of April, next, at 11 o'clock a. m, to show cause why the said Letters on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

By the Court. A. B HAGNER, Justice.
Test: H. J. RAMSDELL, Register of Wills.
IRVING WILLIAMSON, Solicitor. 10

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business. March 6th, 1885

In the matter of the Estate of Eliza Young, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of said deceased, has this day been made by Josephine Young and Rebecca E Young

All persons interested are hereby notified to appear in this Court on Friday, the 3d day of April next, at 11 o'clock, a. m, to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: H J RAMSDELL, Register of Wills.
IRVING WILLIAMSON, Solicitor 10

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business March 6th, 1885.

In the matter of the Estate of Wiley Lane, late of the City of Washington, District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Whitmell Lane, of North Carolina

All persons interested are hereby notified to appear in this court on Friday, the third day of April, next, at 11 o'clock a. m, to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

By the Court. A. B. HAGNER, Justice.
Test: 10 H. J. RAMSDELL, Register of Wills.
JAMES H. SMITH, Solicitor.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 3d day of March, 1885.

GEORGE T. JACOBS
v. } No. 9335. Eq. Doc. 24.
JOHN W. POST and another.

On motion of the plaintiff, by Mr. Daniel O'C. Callghan, his solicitor, it is ordered that the defendant, John W Post, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 10 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE

That the subscriber of District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamenary on the personal estate of John Voegler, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of March, 1885.
10 JOANNETTE VOEGLER,
LOUIS SCHADE, Solicitor. Adminsiratrix

THIS IS TO GIVE NOTICE.

That the subscriber, of Lynchburg, Virginia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Edward Henry Cumpston late of Alexandria, Virginia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of February, 1885.
MARY M. CUMPSTON, Ex'x.
J. J. DARLINGTON, Solicitor. 10

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business March 7th, 1885.

In the matter of the Estate of Isaac H. Taylor, late of Boston, Mass deceased

Application for Letters of Administration on the estate of the said deceased, has this day been made by Sallie B. Taylor, of Plymouth County, Mass

All persons interested are hereby notified to appear in this Court on Friday the 27th day of March next at 11 o'clock, a. m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B HAGNER, Justice.
Test: H. J RAMSDELL, Register of Wills.
O. D. BARRETT, Solicitor. 10

THIS IS TO GIVE NOTICE,

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Josiah Perry, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of February next; they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 20th day of February, 1885.
9 MARY PERRY, Executrix.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Elizabeth Fisher, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of February, 1885.
JOSEPHINE WALDECKER,
O. G. ECKSTEIN, Solicitor 9 Executrix.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 6th, 1885.

In the matter of the Estate of Nellie Jidt, late of the City of Washington, District of Columbia, deceased

Application for Letters of Administration on the estate of the said deceased has this day been made by Henrietta C. Sinclair and Mary J Sinclair.

All persons interested are hereby notified to appear in this court on Friday, the 3d day of April next at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B. HAGNER, Justice.
Test: 10 H. J. RAMSDELL, Register of Wills.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Frances A Lockwood, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of February, 1885.
MARGARET M. LOCKWOOD,
HENRY M. BAKER, Solicitor. 9 Executrix.

THIS IS TO GIVE NOTICE,

That the subscriber, of Washington City, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Samuel M. Barker, late of the District of Columbia, dec'd

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of December, 1884.
WILLIAM M. BARKER, Administrator.
R W. MCPHERSON, Solicitor. 6 3

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration, on the personal estate of Margaret Waters, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of January, 1885.
7 3 COLLINS CRUSOR,
GORDON & GORDON, Solicitors. Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 24th day of February, 1885.

SARAH W. GARDNER
v } No. 9325, Equity.
GRENVILLE G GARDNER.

On motion of the complainant, by Mr. Theodore H. N. McPherson, her solicitor, it is ordered that the defendant, Grenville G. Gardner, cause his appearance to be entered herein on or before the first rule day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice
True copy. Test: 9 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 26th day of February, 1885.

FRANCES E. BURNS
v. } No. 9341. Eq. Doc 24.
ARTHUR P BURNS

On motion of the plaintiff, by Messrs. Miller and Forrest, her solicitors, it is ordered that the defendant, Arthur P. Burns, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER Justice.
A true copy. Test: 9 R. J. MEIGS, Clerk

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February 6, 1885

In the case of Francis M. Lazenby, Administrator of Thomas A. Lazenby, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 13th day of March A. D 1885, at 11 o'clock a m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test 6 H. J. RAMSDELL, Register of Wills.

JOSEPH J. WATERS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February 20th, 1885

In the matter of the Estate of James Torphy, late of the District of Columbia, deceased

Application for the Probate of the last Will and Testament and Letters of Administration, c t a, on the estate of the said deceased, has this day been made by Benjamin F. Rittenhouse.

All persons interested are hereby notified to appear in this Court on Friday, the 20th day of March next, at 11 o'clock a m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration, c t a, on the estate of the said deceased should not issue as prayed Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B HAGNER, Justice.

Test: H. J. RAMSDELL, Register of Wills.

GORDON & GORDON, Solicitors. 6-3

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Jane Rutledge, late of Niles, Michigan, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of February next; they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 13th day of February, 1885

CHARLES A. CHAPIN,

7-3m Adm'r 1331 F St N W.

JAS. R. COOK and N DUMONT, Rooms 3 and 4 1331 F St N W

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business Letters of Administration on the personal estate of Catharine Robinson, late of the District of Columbia dec'd

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof to the subscriber, on or before the 27th day of January next; they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 27th day of January, 1885.

MICHAEL BOYLAND, Administrator.

H B MOULTON Solicitor. 5-3

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February 30, 1885

In the matter of the Estate of Isadora C. Causten, late of Washington, D. C., deceased

Application for Letters of Administration on the estate of the said deceased has this day been made by Lida B Causten, praying that letters be granted to Walter Ker

All persons interested are hereby notified to appear in this court on Friday, the 20th day of March next, at 12 o'clock m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B HAGNER, Justice.

Test: 9 H. J. RAMSDELL, Register of Wills.

JAMES H. TAYLOR, Solicitor.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Joseph D Harris, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of January, 1885.

ELIZABETH W. HARRIS, Executrix.

R. F. LEIGHTON, Solicitor 5-3

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business February 13, 1885

In the case of James L Barbour, Administrator of Bridget M Fitzmorris, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 13th day of March, A. D. 1885, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 7 H. J. RAMSDELL Register of Wills.

THIS IS TO GIVE NOTICE

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Garret B Davis, late of Baltimore, Md., deceased

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of February next: they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of February, 1885.

REGINALD FENDALL,

8-3 Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 20th day of February, 1885.

CHARLOTTE M. BAKER v. JNO R BROOKS ET AL. } No 9329. Eq. Doc. 24.

On motion of the plaintiff, by Messrs. Appleby & Edmonston, her solicitors, it is ordered that the defendants, Hannah Brooks and William Kilgour, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.

True copy Test: 8-3 R. J MAIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 12th day of February, 1885.

ZECHARIAH CHAFEE, trustee, v WILLIAM S, HOYT ET AL } No, 9175. Eq Doc. 24.

On motion of the plaintiff, by Mr J J Darlington, his solicitor, it is ordered that the defendants Wm. S Hoyt, Edwin Hoyt, jr., Chas G Franckiyn and Susan S. Franckiyn, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B HAGNER, Justice, &c.

A true copy Test: 7-3 R J. MAIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Mary Shannon, late of the District of Columbia deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of February, 1884.

JAS. FULLERTON,

9 Administrator.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February 16, 1885.

In the case of Annie Tolman Smith, Executrix of Abby Noyes Condron, deceased, the Executrix aforesaid has, with the approval of the Court, appointed Friday the 13th day of March, A. D 1885, at 11 o'clock a. m, for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executrix will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test 8-3 H. J RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 17th day of February, 1885.

HUGH DOWNEY ET UX
v.
MARGARET E. KING, JAMES I. KING, HUGH TUOHY, BRIDGET TUOHY and PATRICK LEONARD. } No 9334. Eq. Doc 24.

On motion of the plaintiffs, by Mr. N. Dumont, their solicitor, it is ordered that the defendants, Margaret E. King and Patrick Leonard, cause their appearance to be entered herein on or before the first rule day, occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy Test: 9-3 R J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 19th day of February, 1885.

HENRY FETTER
v.
THOMAS J. LOGAN ET AL. } No. 9340. Eq. Doc.

On motion of the plaintiff, by Mr. Saville, his solicitor, it is ordered that the defendants, Thomas J Logan, George W. Linville, and John Galt, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A B. HAGNER, Justice.
A true copy Test: 8-3 R J MEIGS, Clerk

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February 14th, 1885

In the matter of the Will and Estate of James Barry, late of Washington City, District of Columbia, deceased.

Application for Letters of Administration, de bonis non, cum testamento annexo, on the estate of the said deceased has this day been made by Dayton S Ward.

All persons interested are hereby notified to appear in this court on Friday, the thirteenth day of March, next, at 11 o'clock a m., to show cause why Letters of Administration de bonis non c. t. a, on the estate of said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice
Test: 8-3 H. J. RAMSDELL, Register of Wills
WM. T. S. CURTIS, 23, 25 & 26, Kellog Building, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

MARGARET E. STODDART
v.
CATHARINE E BOOTH ET AL. } No. 8833. Eq. Doc. 23.

George E. Hamilton, trustee appointed by a decree of this Court in the above entitled cause to sell the real estate in these proceedings mentioned, to wit: the north twenty-five (25) feet and six and one half (6½) inches, of lot 22, in square No. 37 by the depth of said lot, having reported to the Court that after complying with the requirements of said decree, he offered for sale at public auction the aforesaid property on the 19th day of January, A. D. 1885, and that John Firm, of the City of Washington, in the District of Columbia, became the purchaser thereof, at twenty-one cents per square foot, it is by the Court on this 3d day of February, A. D. 1885, ordered that said sale be, and the same is hereby ratified and confirmed unless cause to the contrary be shown on or before the 5th day of March, 1885.

Provided, a copy of this order be published in the Washington Law Reporter once a week for three weeks before the said 5th day of March, 1885.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 7-3 R. J. MEIGS, Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

FRANKLIN P. SELZER ET AL.
v
GEORGE A. HASKE ET AL. } No. 8901. Eq. Doc. 24.

Upon consideration of the report of Charles A. Walter, trustee herein, and of the report of the Auditor filed herein on the 11th day of February, 1885, upon order of reference passed in this cause on the 14th day of January, 1885; and it appearing to the court that the defendant, Ruppert, has complied with the terms of sale as provided in said decree, by paying to the trustee in this cause the sum of $281. 27, as ascertained by said Auditor's report to be due by him under said decree, it is, therefore, by the Court, this 18th day of February, 1885, ordered that the sales to said Ruppert of part of lots 13 and 14 in square 762, beginning at the northwest corner of said lot 13, and thence running southwesterly along the western line of said lot, 132 feet 9 inches, thence south 18 feet, thence east 36 feet 7 inches, thence north 26 feet 10 inches, thence east 4 feet 6⅝ inches, thence north 21 feet 5⅝ inches, thence east 1 foot 10 inches, thence northeastwardly to a point 30 feet 6 inches, from Pennsylvania Avenue on a line drawn parallel with and 16 feet from the western line aforesaid, thence along said line to said Avenue, and thence along said Avenue 16 feet to the place of beginning; and part of lot 6 in square 534 beginning at a point on the line of a 15 foot alley in said square, 113 feet 5⅝ inches from the southeast corner of said lot, and running thence west 24 feet 5⅝ inches thence north 113 feet feet 5⅝ inches, to a thirty foot alley in the rear of said lot, thence east on the line of said alley 24 feet 8⅝ inches to said 15 foot alley, thence south on the line of said alley 113 feet 5⅝ inches to the place of beginning, to be, and the same are hereby ratified and confirmed, unless cause to the contrary be shown on or before the 18th day of March, 1885:

A. B HAGNER, Justice.
A true copy. Test: 8-3 R J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of administration on the personal estate of Samuel Cook, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 13th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of February, 1885.

THOMAS D. BOND, Adm'r,
JUDSON CULL, Solicitor. 7-3 125 Pa. Ave., N. W.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 20th day of February, 1884.

HENRY CLARKE ET UX,
Complainants,
v
HENRY HOHMAN ET AL.,
Defendants } No. 9338. Eq. Doc. 24.

On motion of the plaintiffs, by Messrs. Hagner & Maddox, their solicitors, it is ordered that the defendants, Henry Hohman, and Louise Hohman, his wife, Amelia H Perry, widow of Anson G Perry; Leonard Perry, Rachel Rynders, sometimes called Rachel Reynolds, and William Rynders, her husband, Annetta Rynders, sometimes called Annetta Reynolds, and Hiram Rynders, her husband, Elizabeth A. Lent, and Benoni S Lent, her husband, Elizabeth Atwell, and John Atwell, her husband, and Rossetta Hibbard, defendants, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 8-3 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Catharine Robinson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of February next; they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 10th day of February, 1885.

ALBERT F. FOX.
H. B. MOULTON, Solicitor. 7-3 Administrator.

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Washington Law Reporter

WASHINGTON - - - - - - March 14, 1885.

GEORGE B. CORKHILL - - - EDITOR

In Memoriam.

It is with profound regret that we are called upon to notice the sudden death of that learned and upright lawyer and citizen, Hon. Robert K. Elliot, which occurred at his residence, near Hyattsville, on Wednesday, March 11. The cause of his death was hemorrhage of the kidneys.

Mr. Elliot was born in this city, on Capitol Hill. He was a graduate of the Columbian College, and was a correspondent of the New York *Express* and the Philadelphia *Age* at one time. He was admitted to the bar of this District in November, 1868, and during his practice here, has been engaged as counsel in some of our most celebrated cases. Mr. Elliot's ability as a lawyer has been long known, and it is needless for us to attempt to say anything of him in that respect. A meeting of the Bar Association was held on Thursday afternoon, to take action upon his death, and suitable resolutions were drafted and adopted; and the members of the Bar Association decided to attend his funeral in a body, which they did on Friday afternoon.

At the time of his death, Mr. Elliot was about 45 years of age. His body was interred in the Oak Hill cemetery. His death has created a vacancy which cannot easily be filled.

THE case of Cassedy v. Hall, decided October 28, 1884, by the New York Court of Appeals, is another case going to prove that the mere fact that a party has a right to a certain share in the profits of a concern does not constitute him a partner thereof, nor make the relation that of a partnership. The facts of this case and the opinion are as follows: Defendants, Hall, Nicoll and Granberry, as parties of the first part, entered into a contract with defendant, the U. S. R. Co., which recited that the parties of the first part contemplated assuming control of said company, when, if ever they shall be satisfied that its business was a profitable one, and that it was expedient that some arrangement should be made whereby that question might be determined; in consideration whereof, and of the mutual covenants and agreements, it was agreed that the parties of the first part, to enable the company to fill its orders, should make advances upon assignment of such orders for goods manufactured by the company as they should approve. Said parties of the first part to collect each of such orders, and out of the proceeds to retain the sum advanced thereon, with interest, and a proportion of the profits made by the company, the same to be not less than ten per cent. of the face of the order. The company also executed to Hall, Nicoll and Granberry a chattel mortgage upon its property to secure such advance. In an action to recover for goods sold to the company, it was held that the contract did not constitute a co-partnership between the parties themselves, or as to third persons. "It is well settled that when a party is only interested in the profits of a business as a means of compensation for services rendered, as was the fact under the contract in the case at bar, or for money advanced, he is not a partner. This question was distinctly presented in Richardson v. Hughitt, 76 N. Y., 55, and it was there held that a person who has no interest in the business of a firm, or in the capital invested, save that he is to receive a share of the profits as a compensation for services or for money loaned for the benefit of the business, is not a partner, and cannot be held as such by a creditor of the firm. In that case, advances were to be made upon personal property, to be manufactured and delivered; for which, when sold, the defendant was to receive one-fourth of the profits, and his advances, with interest, at five and a half per cent. The case cited is directly in point, the same principle is involved, and there is a striking analogy in the facts which renders it applicable to the question now considered. We are unable to perceive any distinction existing between the two cases which authorizes a holding that is not in point. The case cited was approved and upheld in Curry v. Fowler, 87 N. Y., 33, and the principle decided is fully sustained

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in Eager v. Crawford, 76 Id., 97, and Burnett v. Snyder, Id., 344. These cases are conclusive upon the question considered, and none of the decisions in this State are adverse to the doctrine which is therein laid down. We do not deem it necessary, in view of the fact that the law upon the question discussed is well settled in this court, to examine the English authorities bearing upon the subject." The following authorities also bear upon the same point: Collyer, Partn., §§ 25, 39, 85; Story, Partn., §§ 33, 34, 49, 55; 4 Sandf. N. Y., 311; 6 Metc., Mass., 91; 12 Conn., 69; 2 McCord, So. C., 421; 3 Wils., 40; (but see 38 N. H., 287); 4 Esp., 182; 3 Pick., Mass., 435; 4 Id., 234; 14 Id., 195; 23 Id., 495; 3 Story C. C., 112; 2 Younge & C. Exch., 61; 4 Maule & S., 240; 6 Pick., Mass., 335; 16 Mass., 336; 7 Me., 261; 17 Mass., 206; 4 B. & Al., 663; 4 Me., 264; 6 Vt., 119; 10 Id., 170; 1 Camph., 330.

THE following is the full text of the recent French Spoliation Act, as approved January 20, 1885:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That such citizens of the United States, or their legal representatives, as had valid claims to indemnity upon the French Government, arising out of illegal captures, detentions, seizures, condemnations and confiscations prior to the ratification of the convention between the United States and the French Republic, concluded on the thirtieth day of September, eighteen hundred, the ratifications of which were exchanged on the thirty-first day of July following, may apply by petition to the Court of Claims, within two years from the passage of this act, as hereinafter provided: *Provided*, That the provisions of this act shall not extend to such claims as were embraced in the convention between the United States and the French Republic, concluded on the thirtieth day of April, eighteen hundred and three; nor to such claims growing out of the acts of France as were allowed and paid, in whole or in part, under the provisions of the treaty between the United States and Spain, concluded on the twenty-second day of February, eighteen hundred and nineteen; nor to such claims as were allowed, in whole or in part, under the provisions of the treaty between the United States and France, concluded on the fourth day of July, eighteen hundred and thirty-one.

SEC. 2. That the court is hereby authorized to make all needful rules and regulations, not contravening the laws of the land or the provisions of this act, for executing the provisions hereof.

SEC. 3. That the court shall examine and determine the validity and amount of all the claims included within the description above mentioned, together with their present ownership, and, if by assignee, the date of the assignment, with the consideration paid therefor: *Provided*, That in the course of their proceedings they shall receive all suitable testimony on oath or affirmation, and all other proper evidence, historic and documentary, concerning the same; and they shall decide upon the validity of said claims according to the rules of law, municipal and international, and the treaties of the United States applicable to the same, and shall report all such conclusions of fact and law as in their judgment may affect the liability of the United States therefor.

SEC. 4. That the court shall cause notice of all petitions presented under this act to be served on the Attorney-General of the United States, who shall be authorized, by himself or his assistant, to examine witnesses, to cause testimony to be taken, to have access to all testimony taken under this act, and to be heard by the court. He shall resist all claims presented under this act by all proper legal defences.

SEC. 5. That it shall be the duty of the Secretary of State to procure, as soon as possible after the passage of this act, through the American minister at Paris or otherwise, all such evidence and documents relating to the claims above mentioned as can be obtained from abroad; which, together with the like evidence and documents on file in the Department of State, or which may be filed in the Department, may be used before the court by the claimants interested therein, or by the United States, but the same shall not be removed from the files of the court; and after the hearings are closed, the record of the proceedings of the court and the documents produced before them shall be deposited in the Department of State.

SEC. 6. That on the first Monday of December in each year the court shall report to Congress, for final action, the facts found by it, and its conclusions in all cases which it has disposed of and not previously reported. Such finding and report of the court shall be taken to be merely advisory as to the law and facts found, and shall not conclude either the claimant or Congress; and all claims not finally presented to said court within the

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period of two years limited by this act, shall be forever barred; and nothing in this act shall be construed as committing the United States to the payment of any such claims.

Approved January 20th, 1885.

BOOK NOTICES.

MYER'S FEDERAL DECISIONS. Cases argued and determined in the Supreme, Circuit and District Courts of the United States, comprising the opinions of those courts from the time of their organization to the present date, together with extracts from the opinions of the Court of Claims. Arranged by WILLIAM G. MYER, author of an Index to the United States Supreme Court Reports; also indexes to the Reports of Illinois, Ohio, Iowa, Missouri and Tennessee, a Digest of the Texas Reports, and Local Works on Pleading and Practice. Vol. I, Accounts; Appeals. Vol. II, Appeals; Award. Vol. III, Baggage; Bond for Title. THE GILBERT BOOK COMPANY. St. Louis, Mo., 1884.

These books are undoubtedly the most valuable collection of reports of Federal Decisions that are published to-day. Perhaps the first thing that forcibly strikes one on examining these books, is the remarkable manner in which the matter has been arranged. An arrangement more complete and satisfactory will seldom be anywhere found. It takes but an instant to find any subject, and all decisions bearing upon it. The author considers that the great merit of the work consists in this: "(1) The value of the cases. (2) The important cases are all printed in full. (3) The summary at the head of the cases, and the digest matter following, form a complete digest of a subject, as full and as conveniently arranged for consultation as an ordinary digest."

This is certainly a very moderate claim, as compared with the inestimable value of the work, as it will be found by every lawyer. Perhaps there is no way in which we could better show the rare merit of this work than by setting out the volumes and cases to be included in the series, as stated by the author. (The figures following the reports indicate the number of volumes of each.)

Supreme Court Reports: Black, 2; Cranch, 9; Dallas 3; Howard, 24; Otto, 16; Peters, 16; Wallace, 23; Wheaton 12. In all, 105 volumes. Circuit and District Court Reports: Abbott's Admiralty, 1; Abbott's U. S., 2; Baldwin, 1; Bee, 1; Benedict, 10; Bissell, 9; Blatchford, 19; Blatchford's Prize Cases, 1; Blatchford & Howland, 1; Bond, 2; Brown, 1; Chase, 1; Clifford, 4; Crabbe, 1; Cranch C. C., 5; Curtis, 2; Daveis, 1; Deady, 1; Dillon, 5; Flippin, 2; Fisher's Prize Cases, 1; Gallison, 2; Gilpin, 1; Hempstead, 1; Hoffman, 1; Holmes, 1; Hughes, 4; Lowell, 2; McAllister, 1; McCahon, 1; McCrary, 3; McLean, 6; Marshall, 2; Mason, 5; Newberry, 1; Olcott, 1; Paine, 2; Peters' C. C., 1; Peters' Admiralty, 2; Sawyer, 7; Sprague, 2; Story, 3; Sumner, 3; Taney, 1; Wallace, C. C., 1; Wallace, jr., 3; Ware, 2; Washington, 4; Woods, 3; Woodbury & Minot, 4; Woolworth, 1; Van Ness, 1. In all, 142 volumes.

Opinions of Attorneys-General and Court of Claims, 33 volumes.

Federal Reporter, 12 volumes.

Partial list of Federal cases taken from other sources: Smith (N. H.); 3 and 4 Day (Conn.); 16, 32 and 34 Conn.; 2 Brown (Pa.); 6 Call (Va.); 2 Martin (N. C.); 25 Sup. Tex.; Cooke (Tenn.); Overton (Tenn.); Vt. Reports, 20–25, and 29; 35 Georgia; American Law Register, 30 vols.; Brewster (Pa.), 3 and 4; Legal Gazette Reports (Pa.), 1; 2 Haywood (N. C.); Pittsburgh Reports; The Pittsburgh Legal Journal, 3 vols.; The Philadelphia Reports, 12 vols., a reprint of the Legal Intelligencer. In all, 20. The whole, in original volumes, make a total of 312.

It is entirely unnecessary to say any more to prove the value of this work. It should be on the shelf of every lawyer, for such is its intrinsic merit that it at once recommends itself.

We have had these three volumes for some time, but before this have not been able to carefully examine them, and hence have hitherto given no more than a passing notice of them. Upon a careful examination, we take great pleasure in reviewing them more at length, and we unhesitatingly say, that we consider them as one of the most valuable series of modern works we have had the pleasure of reviewing. They will, indeed, prove a *vade mecum* to every lawyer, and to all interested in any way in the profession. All these books are finely printed, and bound in law sheep, in the usual elegant style of the Gilbert Book Company. We strongly recommend this work to the most earnest consideration.

THE child of slander is never born toothless.

NATURE never builded so perfect that fashion did not try to improve the work.

MEN sometimes rise so high on the wave of fame that all the joys of earth escape them.

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A Novel Telephone Case.

Supreme Court of Kentucky. Jan. 22, 1885.

1. *Presumption; Letters; Evidence.*—The fact of mailing a letter, properly addressed, with postage prepaid, creates no legal presumption that it was duly received; but it is merely a fact which is to be weighed along with other evidence in determining the question, and to which no more presumption attaches than to any other fact.
2. *Telephone Message; Evidence.*—Where A, desiring to talk over the telephone with B, asked the operator to call him, and the operator thereupon had a conversation with B, reporting to A, who was standing by, what B. said as it came over the wire, *held*, in subsequent action between A and B, the former might prove by himself and others what the operator reported to him as coming from B, the operator being called and not remembering the conversation.

SULLIVAN, &c., *v.* KUYKENDALL.

Appeal from Warren Circuit Court.

Opinion of the court by Judge Holt.

By the terms of a verbal contract for the sale of personal property, the appellants, Sullivan & Co., were to estimate and receive it within ten days after notice from the appellee, Kuykendall, that it was ready.

On January 26, 1880, he wrote them a letter, which by due course of mail should have been received by them within the next two days, but which, in point of fact, as the testimony shows, was not received until February 17, 1880, notifying them that the property would be ready for them on February 9, 1880.

About February 11th or 12th, 1880, Green river began rising, and, by the 13th of the same month, had overflowed its banks, and the property being along them, was in the main destroyed. The letter above named was properly enveloped, stamped, and deposited in the post office, and addressed to the appellants at their usual post office.

The lower court in substance instructed the jury that if they believed from the evidence that said letter was written, addressed to the appellants at their proper post office, duly stamped, and placed in the office, then the presumption was that it was received in due course of mail, and that this presumption must prevail, unless overthrown by satisfactory evidence that it was not so received.

This instruction was doubtless based upon the statement to be found in some text books, and a few cases to the effect that when a letter is sent by the post it is to be presumed, from the known course in that department of the public service, that it reached its destination at the usual time, and was received by the person to whom it was addressed, if living there and usually receiving his letters at that place.

It will be found, however, that the most of these cases go no farther than to hold that in the absence of all other evidence upon the point, that the mailing of a letter, properly directed, raises a presumption that it was received; and that this presumption must prevail unless rebutted by other testimony.

In the leading case of Huntley v. Whittier, 105 Mass., 391, the learned judge (Gray, J.) said, that the depositing of a letter in the post office, addressed to a merchant at his place of business, is *prima facie* evidence that he received it in the ordinary course of mail; but that the jury should be so instructed only in the *absence* of other testimony upon the point.

The case of Russell v. Buckley, 4 R. I., 525, is to the same effect; while authority is abundant that the mailing of a letter creates no presumption whatever that it was duly received.

In United States v. Babcock, 3 Dillon's C. C. Reports, 571, Judge Dillon uses this language: "Upon the subject of the admissibility of letters by one person addressed to another, by name, at his known post office address, prepaid, and actually deposited in the post office, we concur, both of us, in the conclusion, adopting the language of Chief Justice Bigelow in Comm. v. Jeffries, 7 Allen, 563, that this is evidence tending to show that such letters reached their destination, and were received by the persons to whom they were addressed.

"This is not a conclusive presumption; and it does not even create a legal presumption that such letters were actually received; it is evidence tending, if credited by the jury, to show the receipt of such letters.

"In the case of negotiable paper it has long been held that the depositing of a letter in the post office by the holder to the endorsers is not only good *prima facie* evidence, but sufficient to establish the fact that notice was given; but this rule has been established by the law merchant through commercial necessity.

"By the common law this presumption did not exist even as to negotiable paper; and, after a careful examination of the authorities, we are satisfied that it ought not to be held to arise in ordinary business transactions, and especially between men whose business does not require them to watch the arrival of the mails." Freeman v. Morey, 4 Me., 50; Nat. Bank v. McManigle, 69 Penn., 156; Greenfield Bank v. Crafts, &c., 4 Allen, 447.

The mailing of the letter in this instance created no legal presumption, but was proper

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testimony to be considered by the jury, together with the other evidence, in determining when it was received, and they should not have been instructed that a presumption arose from it, which must prevail unless overthrown by other satisfactory evidence.

The instructions in other respects were unobjectionable.

The appellants relied upon an alleged new contract between them and the appellee, by which the one sued upon was annulled; but this was a question of fact as to which the testimony was conflicting; and the finding of the jury would not therefore be disturbed, if this were the only question presented by this appeal.

In view of another trial of the case, it is proper that we should pass upon what seems to us to be a new question as to the competency of certain testimony; at least we have been unable to find any direct authority on it.

The appellee upon going to the place, on February 9, 1880, where the property was to be received, did not find the appellants or any one representing them there.

He thereupon went to a telephone office at Morgantown, Kentucky, for the purpose of communicating with the appellants at Bowling Green, Kentucky; and not being accustomed to the use of the instrument, he got the operator to talk for him. He first directed him to call for the appellant, Sullivan, and he did so, the Bowling Green operator reporting back that he would send for him to come to the office. Presently, the Morgantown operator told the appellee that Sullivan was at the Bowling Green office, and desired to know what was wanted; and thereupon a conversation took place, Sullivan using the instrument himself, while the Morgantown operator talked for the appellee, and told him what Sullivan said as it came over the wire.

The latter testifies that on that day he had a conversation over the telephone with some one at Morgantown, and upon the same subject to which the appellee says the conversation related; but they differ widely as to what was said. The Morgantown operator, being introduced as a witness, testifies that upon the day named he had a conversation upon that subject with some one at Bowling Green, whom the operator there told him was Sullivan, but that he does not recollect what was said. Under this state of case, the court below permitted the appellee to prove by himself, and two other persons who were present at the time, what the Morgantown operator reported to appellee, while the conversation was going on over the wire, as being said by Sullivan.

It is certain that the latter did talk over the wire, because he says so. The appellee did not pay the telephone charge; and it does not appear who did, save the Bowling Green operator reported to the Morgantown one that Sullivan would do so; and the latter is silent upon this point.

It would beyond question have been competent to prove by the Morgantown operator what Sullivan said to him; but whether his report to the appellee of what Sullivan was saying, made as the conversation progressed, is competent or falls within the domain of incompetent hearsay testimony, is a question of importance, in view of the astonishing growth of the business to which it relates, and one not free from difficulty.

In the case of a telegram the original must usually be produced in evidence, or its loss shown, before its contents can be proven, or the copy delivered by the operator to the party receiving the message used, unless it be where the copy becomes primary testimony by the telegraph company being the agent of the sender.

In the use of the telephone, however, the parties talk with each other as if face to face; and, save where a message is sent, there is no written evidence of what has passed. By inventive means they are brought together for the transaction of business.

It is a well settled rule that where one through an interpreter makes statements to another, that the interpreter's statement made at the time of what was so said, is competent evidence against the party.

The interpreter need not be called to prove it; but the interpreter's statements may be proven by third persons who were present and heard it. Camerlin v. Palmer Co., 10 Allen, 539; Schearer v. Harber, 36 Ind., 536; 1 Greenleaf on Ev., 183; 1 Phillips on Ev., 519.

The reason of this rule is, that the interpreter is the agent of both parties, and acting at the time within the scope of his authority; and we have been unable to draw any satisfactory distinction between this case and the one under consideration.

The argument is at least plausible, if not correct, that the testimony in question is competent as a part of the *res gestæ*, aside from the question of agency.

It is true the parties cannot see each other; but the statements of an interpreter between blind persons could be proven by third parties, without calling the intepreter as a witness; and by telephonic means persons are as much together for all purposes of conversation, and acters in what may be occurring,

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as if they were immediately present with each other.

We must not be understood, however, as holding the testimony competent upon the above ground, because there is another reason for so ruling which is conclusive to our minds.

Subject to various qualifications, the old rule that a party must produce the best evidence within his power to prove a fact should govern. But as business expands by the aid of new inventions, wider scope must be given to the rules of evidence. There is no need, however, of any departure or innovation in this case, because it is a well settled rule of evidence that the statements of an agent, when acting within the scopo of his agency, are competent against his principal.

When one is using the telephone, if he knows that he is talking to the operator, he also knows that he is making him his agent to repeat what he is saying to another party; and in such a case certainly the statements of the operator are competent, being the declarations of the agent made during the progress of the transaction.

If he is ignorant whether he is talking to the person with whom he wishes to communicate or with the operator, or even any third party, yet he does it with the expectation and intention on his part, that in case he is not talking with the one for whom the information is intended, that it will be communicated to that person; and he thereby makes the person receiving it his agent to communicate what he may have said. This should certainly be the rule as to an operator, because the person using a telephone knows there is one at each station whose business it is to so act; and we think that the necessities of a growing business require this rule, and that it is sanctioned by the known rules of evidence.

Judgment reversed.

Judge Pryor delivered the following dissenting opinion:

The question decided in this case is novel and of great importance to the commercial world.

The terms of a contract are attempted to be established by messages alleged to have been forwarded by the one to the other of the parties over a line of telephone extending from Morgantown to Bowling Green.

The appellee being desirous of showing that the appellant agreed to receive a lot of hooppoles on the bank of Green river within a certain time, applied to the telephone agent at Morgantown to ascertain from Sullivan, the appellant, at Bowling Green, why he did not attend for the purpose of receiving the poles. The agent at Morgantown telephoned to the agent at Bowling Green in regard to Sullivan, aud sent a message back that Sullivan was present at Bowling Green and would answer for himself.

The message sent by Sullivan was (as Sullivan swears,, and that fact is no where contradicted), to the effect that he had not been notified that the hooppoles were ready, and therefore did not send to receive them. The appellee says that the message he received from Sullivan at Bowling Green was that the agent of appellant was sick, and for that reason did not send him down. This is denied by Sullivan, and the operator at Morgantown recollects that the message was in regard to the hooppoles, but fails to recollect what it was. The appellee was then allowed to prove what the agent at Morgantown told him as to the character of the message, and that was "that he failed to send because Allen was sick." He was also allowed to prove, by one or two others in the room, that the telegraph operator at Morgantown made that statement to the appellee. It is not pretended that either the appellee or those present heard what was said by the appellant, and all they know as to the nature of the response made to appellee's inquiry is what was told them by the operator, who does not himself recollect what the response was. It is difficult to understand upon what principle this testimony is to be admitted. It cannot be said that the operator at Morgantown was the agent of Sullivan, the appellant, at Bowling Green, and for that reason his admissions are binding on the principal. Nor can it be said that he was the agent of Sullivan for the purpose of ascertaining what the contract was, but on the contrary he was the agent of the appellee. The latter wanted this agent to inquire of Sullivan, who doubtless did not even know him, why he had failed to take the hooppoles on a named day, and the information was given him by Sullivan, as the latter admits. But this admission appellee says is untrne, because the agent of the appellee told other parties, not in the presence of Sullivan, that the reason you failed to come was that your man was sick. The agent don't recollect what the message was, but those present recollect what the agent said it was.

A telephone agent who makes an inquiry through the telephone for the benefit of and at the instance of another is not made the agent of the party responding. The relation of principal and agent cannot arise farther than to admit the testimony of the operator as to what the conversation was. He will not be allowed to close his mouth, and others per-

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mitted to testify to his statements of what passed between him and the party sought to be made liable.

The human voice, by means of this remarkable discovery, may be heard at almost any distance. It requires neither science or skill to use it as a means of conversation, and the result is that almost any one in the office may be called on to use it for others, and to establish the rule that the declarations of the one receiving the message as to the substance of the response made is subversive not only of a well recognized rule of evidence, but dangerous in its application.

The operator is not an interpreter in a legal sense. When persons of different nationalities are unable to understand each other, they call on an interpreter and he speaks for them—in their presence—those present hear his statements. This is original testimony, as much so as if the same witnesses were present and heard the parties themselves conversing with each other. There is no analogy between the case of an interpreter and that of a telephone operator. Here the parties conversing are miles apart; the one is called to respond to the other; when Sullivan responds, he is responding to Kuykendall, although through the agency of another. That operator can swear to what the statements were, but his declarations are no more competent than if Kuykendall himself had talked to Sullivan, and reported to others what Sullivan said. If the operator's statements are competent, so would Kuykendall's have been if he had made the inquiry and heard the response.

That one may consult another, his agent, by telephone, is not questioned, but that one who responds to an inquiry makes the party to whom he responds such an agent as that the latter's declarations are competent against him, I deny.

To illustrate the position assumed in this case, and leaving the telephone for a brief moment: The appellee sends the operator at Morgantown to Bowling Green to know of Sullivan why he failed to take the timbers. He makes the inquiry of Sullivan, and reports to those present in the room at the time, that Sullivan told him it was because "Allen was sick." This Sullivan denies. Is it then competent for Kuykendall to prove by those present (the operator not recollecting) what report the operator made to them? If Sullivan heard what the operator said to the bystanders, it would be competent, or if it could be inferred that he heard what was said, it might be competent, but when you concede that he did not hear, as must have been the case when he was telephoned, it would be clearly incompetent. The operator would be as much the agent of Sullivan in the one case as in the other, but really not the agent in either instance.

Two merchants on one side of Main street propose to buy 100 barrels of pork from a merchant on the opposite side. The one directs his clerk to telephone the merchant on the opposite side of the street that he will give him ten dollars per barrel for the 100 barrels. The clerk telephones and reports the response to his principal and those present, that the proposition is accepted. The other merchant, who has no telephone, directs his clerk to step to the door and call to the merchant on the opposite side, making the same proposition. He does so and reports an acceptance of the proposition. The merchant refuses to deliver the pork in either instance, because, he says, he agreed to take twelve dollars per barrel, and this was his response, and he proves this to have been the response made by himself and those present. The two clerks fail to recollect what the response was, but it is offered in each instance to prove the report made by the two clerks to their principal, and in this manner contradict the statements of those who heard the response made. Can such testimony be competent? It is certainly incompetent in the one case and not competent in the other, unless the necessities of trade connected with this new discovery requires a departure from a well recognized rule of evidence.

It is at last a question solely as to what the conversation was. Those who heard it are competent witnesses, but their statements to others as to what they heard are inadmissible.

Suppose Sullivan, instead of talking himself, had conversed through the operator at Bowling Green, then the statements of the operator at Morgantown, according to the principal opinion, could be competent to contradict the oath of the operator at Bowling Green as to the message sent by him. That this could be done, if the operator at Morgantown was called as a witness, is not doubted, but his statements to others as to the conversation, should have been excluded. Nor can such testimony be admitted upon the ground that it was the best testimony the appellee, under the circumstances, could produce. Such a rule would open the door for all hearsay testimony.

Such agents could easily be found willing to report a conversation to others that they would not swear to themselves.

It is maintained, however, that this operator was an agent, and acting within the scope of his authority, and therefore his statements are admissible. What was the scope of his author-

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ity? Are the statements of an agent for a special purpose admissible to prove the extent of his authority? If so, it is a novel doctrine. The acts of an agent may be permitted so as to presume general authority, but where the power is special, and he departs from it, his transaction is void. So if A authorizes B to tell C that he will take his poles on a fixed day, and B tells him that A will take them ten days prior to that time, there being no other agency, he has no power to bind A, and certainly his statements are not competent to show the extent of the special agency.

The testimony is purely hearsay, and all the reasons induced by consideration of both public and private interests for excluding that character of testimony, apply with great force to this case. While I concur in the reversal of the judgment, I must dissent from so much of the opinion as authorizes the admission of this testimony.

Fares in Bobtail Cars.

A suit by James B. Corbert against the Twenty-third Street Railroad Company for damages for alleged false imprisonment was recently tried before Judge Beach in Supreme Court Circuit. Corbert, while riding in a Bleecker street "bobtail" car with three companions, whose fares he undertook to pay, by mistake put 25 cents into the box. The driver, on his attention being called to the matter, said he could not correct the error, and that the only way was for Corbert to explain the matter at the company's office at the end of the route. A lady entered the car soon after, and Corbet, explaining to her that he had put too much money in the box, asked her to give him her fare, which she did. Corbert was then arrested on complaint of the driver, taken off the car, and taken to the station house, where he spent the night in a cell. Police Justice White discharged him the next morning, at the same time telling him that he had acted improperly and thereby committed a breach of the peace.

Judge Beach dismissed the complaint, holding that, whatever Corbert's intention was, the legal effect of his act was the commission of an offense against the railroad company warranting his arrest.—*N. Y. Daily Register.*

Suit Against an Odd Fellows' Lodge.

A suit was recently tried at Toronto, Canada, before the Queen's Bench against the Phœnix Lodge of Odd Fellows of Whitby, a small town near that place. The action was instituted by Richard Kinver, of a neighboring town, for compensation for injuries sustained by him at the hands of members of the lodge while he was undergoing initiation into the body. Kinver appeared in court on crutches, and had several severe contusions on his head. He said he was blindfolded with a sort of cap, then led into the lodge room, a chain fastened round his body, and he was swung into the air. He received a push from behind, while in this position, which caused his head to strike violently against some object before him. He was almost stunned by this, and heard some one say: "Shall we have mercy?" and some one else answered: "Have mercy." He was then let down and led around the room with the chains and cap still on him. Kinver said the injuries he had received incapacitated him from work, and it was probable he would never recover from the injuries. Medical men said that Kinver had received internal injuries, from which he might not recover. The defendants admitted the principal parts of the plaintiff's statement, but said it was against their constitution to admit any man as a member who was not healthy. Kinver was in ill health, but had managed to get himself initiated, they said, by misrepresentations. The defendants said the initiation of members of Odd Fellows' lodges are the same all over Canada and the United States.

Judgment was reserved.

Partnership: Liability of One Partner for Acts of Another after Dissolution; Instructions to Jury.—Where a note and mortgage have been intrusted to a firm of attorneys for collection, the mere dissolution of the firm will not release one partner from responsibility to the client for money subsequently collected by the other partner to whom that business was, by the terms of the dissolution, transferred. Such a release could be brought about only by the express contract of the parties, or by a contract fairly implied from the circumstances and transactions after the dissolution. Instructions in such a case, giving too much importance to the mere facts of dissolution, are held to have been misleading. [Waldeck v. Brande, S. C. Wis., 21 N. W. Rep., 523.]

HON. PINKNEY H. WALKER, associate judge of the Supreme Court of Illinois, died at his home in Rushville, Schuyler Co., Ill., on Saturday, the 7th inst., after a short illness of two weeks. The cause of his death was diabetes from which he had suffered for several years.

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The Right to Insist on a Name.

Several cases on the right of name have been before the French courts involving, in quite different form, somewhat analogous questions.

In one it appeared that a Frenchman, by the name of Payot, purchased a perpetual concession in a cemetery to serve for the interment of his family, including a grandchild, and caused to be erected a monument and a tomb containing six compartments, and inscribed upon the tomb the words, "Families Payot et Lenormand," he having caused to be interred therein the remains of three of his children, and of those of the grandchild.

On his death his remains were interred in the fifth compartment of the tomb; and afterward his widow caused the words "et Lenormand" to be obliterated from the inscription.

This action was accordingly brought to require her to replace the inscription in the form in which it had been established by her husband. But during the course of the litigation the widow herself died, and her remains were then placed in the sixth and last compartment of the tomb, thus filling it completely. Her heirs, nevertheless, continued to defend the action.

The court held that as the object for which Payot purchased the burial place included the interment of young Lenormand, as specified in the grant and indicated, moreover, publicly by the inscription on the monument, this gave a right which could not be retracted by caprice; and they awarded judgment for the reinstatement of the inscription.

In another case an artist brought an action against a picture dealer who had possession of a work of which the artist was the real author, but on which the name of Corot had been falsely substituted in place of his original authentic signature. The object of the action was to compel the picture dealer to allow the artist to replace his own signature, effacing the name of Corot.

The genuineness of the picture as his work was established, and although it had been sold by him, when bearing his signature, for one hundred and fifty francs, and after the falsification of signature had been sold for twelve thousand (reaching shortly after the gallery of Alexander Dumas *fils*, who, on discovery of the forgery, returned it to the dealers, the court held that the claim of the artist was well founded, and although there was nothing to show that the dealers were privy to the fraud, it was held that they had improperly refused the request of the artist and were liable for the costs of the action, as well as a penalty of one hundred francs per day for delay, if, within eight days, they had not allowed him to replace his signature.—*N. Y. Daily Register.*

THAT it is often difficult to determine what are the necessaries for an infant, the following cases will show: Counsel fees in a bastardy suit are held to be necessaries. Barber v. Hibbard, 54 N. H., 539, and so in a wedding suit, Sands v. Stockton, 14 B. Mon., 232. On the other hand timber for the house of an infant is not a necessary (Freeman v. Bridger, 4 Jones (Law) 1), nor are repairs on the house of an infant (12 Met., 559), nor is fire insurance (Ins. Co. v. Noyes, 32 N. H., 345). Filling the tooth of an infant is a necessary (Strong v. Foote, 42 Conn., 203). A common school education is a necessary, but not a collegiate education (Middlebury College v. Chandler, 16 Vt.; Turner v. Gaither, 83 N. C., 357; Benchell v. Clary, 3 Brevard, 194). Treats of an undergraduate at college, are not necessaries (11 Mees & Wellsby, 67; 152 B., 606), neither are kid gloves, cravats, cologne and walking canes (Le Fills v. Sugg, 15 Ark., 137). The supreme court of South Carolina holds that while lodging, clothing, food, medicine and education are necessaries, that liquor, pistols, powder, saddles, bridles, whips, fiddles and fiddle strings are not (Saunders, Glover & Co. v. Adm'r Ott, 1 McCord, S. C., 572) "In England a pair of solitaires (or shirt fasteners), worth 25 pounds, are not, it would appear, necessaries for an infant," (Schouler on Dom. Rel., 3d ed., sec. 411; Ryder v. Wombuell, L. R., 4 Exch., 32). Cigars and tobacco are not necessaries (Bryant v. Richardson, L. R., 3 Exch., 93), nor is a chronometer worth 68 pounds, for a lieutenant in the royal navy (Berolles v. Ramsey, Holt, N. P., 77). A horse may be a necessary for an infant, where he may be directed by his physician to ride for exercise (Hart v. Prater, 1 Jur., 623). This has been held not to be a necessary in South Carolina (Rainwater v. Durham, 2 Nott & McC., 524).

Married Woman: Separate Estate; Assent to Disposal by Husband.—A wife was asked to permit her husband to apply a specified part of her separate estate in payment of his debt. She delivered the property to him, and he, with her knowledge and without objection by her, transferred it to his creditor for such purpose. *Held*, She thereby makes an express assent that her husband may dispose of such property for his own use and benefit. [Franc v. Nirdlinger, S. C. Com. O., Oct. 21, 1884.]

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Severance of Trees.

In Swinburne v. Ainslie in the chancery division of the English court (33 Weekly Reporter, 195) severance of trees from land by the wind was under consideration.

Testator made his will in October, 1873, devising his real property. In December and January following, violent storms blew down a large number of trees on the property, and in February testator died without having taken any steps in regard to them. *Held*, That those which were substantially blown down had become personalty.

In applying the test as to what should be deemed severed, Pearson, J., said: "A tree is substantially blown down if the tree is so far blown down that the tree cannot grow as a tree any longer in the ordinary sense in which a tree grows. A tree which is blown down within three feet of the ground cannot grow as a tree ordinarily grows, because a great number of the roots must be out of the ground. A tree that is simply lifted, and is no longer in the perpendicular, can grow as a tree."

That is to say, the question was, how many of the trees were so far blown out of the perpendicular that they would no longer grow in their natural mode of growth as trees?

The court appointed a referee to determine this question.

Supreme Judicial Court Mass.

WOODCOCK *vs.* CITY OF WORCESTER.

Tort: Personal Injuries; Admissibility of Evidence.

This was an action to recover damages for personal injuries sustained by the plaintiff on account of an alleged accumulation of ice and snow upon a sidewalk of the defendant city. The plaintiff offered evidence to show that the defect alleged existed a week previous to the accident. This evidence was rejected, and the plaintiff excepted.

HOLMES, J.—The court might, in its discretion, reject evidence of the condition of the sidewalk as to ice a week before the accident happened, so far as offered to prove the condition at the time of the accident, even if under special circumstances it would have been warranted in admitting it. Berrenburg v. Boston, Norfolk, May, 1884. The witness called did not undertake to speak of the continuance of the same defect down to the moment of the accident from daily observation; and, although the counsel for the plaintiff stated that he expected by this and other witnesses to prove that the defect had existed in substantially the same way for eight or ten days, yet in view of the plaintiff's own testimony that the day before the accident, snow fell to the depth of four or five inches, followed by rain and then by a thaw, we must take it that the intended proof was by way of inference from other testimony, which the court properly considered too remote. The plaintiff argues that the evidence was admissible to prove notice. What we have said applies to this argument also, for the notice to be proved must be notice of the same defect. Furthermore, the defence was not put on want of notice of the condition of the sidewalk, such as it was, but on a denial that the condition was defective.

Exceptions overruled.

1 Daily Law Record, No. 106.

NOTES OF RECENT DECISIONS.

Waters: Riparian Rights; Highways and Bridges; Trespass upon Land of Riparian Owner.—The owner of land upon tide water holds to low water mark subject to the public easement, as expressed in the colonial ordinance of 1641-7. A stream subject to the tide, and of sufficient size to give passage for boats, is a navigable stream, and the public has the right to boat and fish there. The leaving a boat in such stream below low water mark, is not a trespass upon the land of the riparian owner. A bridge across such stream, built and maintained for public use, resting at each end upon the land of the riparian owner, within the limits of a highway, is not his property. The fastening of a boat to such bridge, is not a trespass upon the property of the riparian owner, or upon property of which he has possession or control. A traveler, as against the owner of the fee, has the right to turn from the beaten path of a highway, and use any part of it to pass and repass upon. A traveler has a right to approach a public water way from any part of the highway, without becoming a trespasser upon the owner of the fee. [Parsons v. Clark, S. C. Me., Dec. 3, 1884.]

Marriage: Of Insane Person Impeachable Collaterally.—By the provisions of Maine R. S., c. 59, § 2, no insane person is capable of contracting marriage; and by Maine R. S., c. 60, § 1, the marriage of an insane person, when solemnized in this State, is absolutely void. When, in the trial of an action for the recovery of pauper supplies, the validity of an alleged marriage becomes material, it may be impeached by proving the insanity of one of the parties thereto, when the marriage was solemnized in this State. [Inhabitants of Unity v. Inhabitants of Belgrade; Sup. Ct. of Maine, 76 Me., 419.]

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Trade-Mark: Use of Surname; Parties of Same Name; Deception and Fraud; Injunction.—While a party cannot be enjoined from honestly using his own name in advertising his goods and putting them on the market, where another person, bearing the same surname, has previously used the name in connection with his goods in such manner and for such length of time as to make it a guaranty that the goods bearing the name emanate from him, he will be protected against the use of that name even by a person bearing the same name, in such form as to constitute a false representation of the origin of the goods, and thereby inducing purchasers to believe that they are purchasing the goods of such other person. [Landreth v. Landreth, U. S. C. C., E. D. Wis., 22 Fed. Rep., 41.]

Master and Servant: Liability for Wilful Torts; Employment.—A master is not liable for the wilful and tortious acts of his servant, even though done when about the business for which he was employed. [Adams v. Cost, Ct. App. Md., 18 Rep., 686.]

The Courts.

U. S. Supreme Court Proceedings.

March 9, 1885.

Henry B. Fouke, Dubuque, Ia.; H. F. Thomason, Van Buren, Ark.; John S. Young, Shreveport, La.; Robert A. Howard, Little Rock, Ark.; M. H. Sandels, Fort Smith, Ark; Selden S. Wright, San Francisco, Cal.; John K. Goodloe, Louisville, Ky.; Frank T. Lodge, Detroit, Mich; William Hyndman, Ketchum, Idaho; Norman H Ruick, Hailly, Idaho; T. Moultry Mordecal, Charleston, S. C.; James Blair, Grand Rapids, Mich.; A. J. Williams, Cleveland, O.; P. W. Hardin, Frankfort, Ky.; Arthur E. Valois, Denver, Col.; R A. Jones, Rochester, Minn.; George W. Batchelder, Fariboult, Minn; Joseph E. Hazard, Randolph, N. Y.; Lewis L. McArthur, "The Dalles," Ore.; John M. Chilton, Opelika, Ala., and J. D. Vertner, Port Gibson, Miss.; Thomas R. Huddleston, of St. Paul, Minn.; A. J. Holmes, of Boone, Ia.; F. S. Struble, of Semars, Ia; T. T. Gaammage, of Palestine, Tex; Walter George Smith, of Philadelphia, Pa.; John M. Glover, of St. Louis, Mo.; Robert Snodgrass, of Harrisburg, Pa.; Francis E. Brewster, of Philadelphia Pennsylvania; James H. Ward, of Chicago, Ill.; and Eugene Schuyler, of Ithaca, N. Y.; have been admitted to practice.

Hon. B. H. Brewster presented to the court the Hon. A. H. Garland, Attorney General of the United States and his commission, which was orderd to be entered on the minutes of the court.

No. 382. L. M. Marshall v. Stephen Hubbard; motion to dismiss denied.

No. 1067. John R. Elder v. Emma W. Ulman; motion to dismiss or affirm denied.

No. 612. Rosewell G. Rolston et al. trustees, etc., v. Thos. T. Crittenden, governor, etc., et al.

No. 792. Thos. T. Crittenden, governor, etc., et al. v. Rosewell G. Ralston et al. trustees, etc.; motion to advance denied.

No. 730. Wm. Barnes, trustee, v. The Chicago, Milwaukee and St. Paul Railway Company; motion to advance denied.

No. 927. M. A. Dauphin v. The *Times* Publishing Company; motion to advance denied.

No. 1273 G. De Rosset Lamar, executor, etc., v. Hugh McCulloch; motion to advance granted and cause assigned for argument on the second day of next term.

No. 1263. Roger Clawson v. The United States; motion to advance granted and cause assigned for argument at foot of call for April 6 next.

Nos. 1268 and 1269. Thurber Whyland & Co. v. A. W. Woodward et al.; motion to advance under thirty-second rule granted.

No. 306. The Town of Richland v. Augustus T. Post; dismissed with costs.

SUPREME COURT OF THE DISTRICT OF COLUMBIA

GENERAL TERM.

March 9 1885.

Speer v. Coyle. Argument concluded and cause submitted

March 10, 1885.

B. & O R R. Co v Hetzel. Submitted

B & P R. R Co. v District Commissioners Decree below denying injunction reversed, from which the District appeals.

March 11. 1885.

John A Clarke appointed commissioner and examiner in chancery.

Krefe v Bramhall On trial.

March 12, 1885.

U. S. use of John Lang et al. v. Philip and Peter May. Argued and submitted

Lucy Virginia Clare Dungan et al. v. Henry A. Clarke et al. Dismissed.

March 13, 1885.

U.S. v Willey. The personal representatives of deceased ordered to appear within ten days of the ensuing term of the court.

Smith v. Smith. Decree for alimony in court below affirmed.

PROBATE COURT.—Justice Hagner.

March 13, 1885

In re will of Jenkin Thomas. Will admitted to probate and record

In re will of G. A Bassett. Will fully proven.

In re will of George Gregory Will fully proven.

Estate of Mary Shannon Order authorising sale.

In re will of Maria C Koch Order of publication.

Estate of Peter D. Posey. Will admitted to probate and letters granted to S. C. Busey on giving special bond of $40,000.

Estate of D A. McCarthy Order of publication.

In re will of Sarah J. Chipman. Renunciation of J F. Guy as executor and guardian.

Estate of S. Pumphrey Order of sale.

Estate of Elizabeth W. Goldsborough Letters granted to Wm Wirt, and bond fixed at $10,000

In re will of Irene Bland Order appointing J. H. Smith guardian, and bond fixed at $300.

Estate of Charles Miller. Order of publication.

Estate of Caroline E Brihs Citation issued.

Estate of Leon Sidi Order of publication

Estate of Thomas B. Medary. Will filed and order of publication.

Estate af H. N. Barlow. Rrferred to W. H. Dennis to take proof.

Estate of S L. Crown Order of of publication issued.

Estate of Egbert L. Weaver Order directing titles to issue to the widow on bond of $1,000.

Estate of Mary Ann Hagan Order of publication.

Estate of Elizabeth Van Newkirk Citation issued

Will of John Beck Order of publication issued.

Estate of M J. Keane. M. J. Keane appointed guardian on bond of $1,200

Estate of Daniel Brown. Will admitted to probate and letters issued on bond of $100

Estate of James Barry. Order granting letters c. t. a. to D. L. Ward on bond of $2,500.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 13, 1885.

In the matter of the Estate of Mary Ann Hagan, late of Washington City, deceased.

Application for Letters of Administration on the Estate of the said deceased, has this day been made by Michael J. Keane.

All persons interested are hereby notified to appear in this Court on Friday, the 3d day of April next, at 11 o'clock a. m., to show cause why the said Letters of Administration, on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B HAGNER, Justice.
Test: H. J. RAMSDELL, Register of Wills.
HANNA & JOHNSTON, Solicitors. 11

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 11th, 1885

In the matter of the Estate of Hannah Adler, late of the District of Columbia, deceased.

Application for Letters of Administration, on the Estate of the said deceased has this day been made by Henry Adler.

All persons interested are hereby notified to appear in this court on Friday, the 3d day of April, next, at 12 o'clock m., to show cause why Letters of Administration on the estate of said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice
Test: 11 H. J. RAMSDELL, Register of Wills.
SIMON WOLF. Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 10th day of March, 1885

CLARA J. HEYLAND ET AL. v. MARSHAL WALLACH ET AL } No. 9294. Eq Doc. 24.

On motion of the plaintiffs, by Mr. Irving Williamson, their solicitor, it is ordered that the defendants, Marshal Wallach, Adelaide S. Carusi, and Genevieve Carusi, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
True copy. Test: 11 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business March 18th, 1885.

In the matter of the Estate of John Beck, late of the City of Washington, deceased

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by Christian Ruppert and John L. Vogt

All persons interested are hereby notified to appear in this court on Friday the 3d day of April next at 11 o'clock, a m, to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B HAGNER Justice.
Test: 11 H. J. RAMSDELL, Register of Wills.
HANNA & JOHNSTON, Solicitors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

HARRIET A. SAUNDERS ET AL. v. JAMES L. SAUNDERS ET AL. } In Equity. No. 6888.

Upon the consideration of the report of Albert McIntosh, trustee, in the above cause it is this sixth day of March, 1885, ordered that the sale of the real estate therein mentioned to Robert Johnson be ratified and confirmed, unless cause to the contrary be shown on or before the seventh day of April, 1885 Provided, a copy of this order be published once a week for each of three successive weeks in the daily Evening Star, in the said District, before the 7th day of April, 1885.

A B HAGNER.
A true copy. Test: 11 R. J. MEIGS, Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 13, 1885.

In the matter of the Estate of Maria Christine Koch late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Werner Koch.

All persons interested are hereby notified to appear in this court on Friday, the 3d day of April next at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B HAGNER, Justice.
Test 11 H J. RAMSDELL, Register of Wills.
LOUIS SCHADE, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business March 18, 1885

In the matter of the Estate of Thomas B Medary, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Kittie W. Medary.

All persons interested are hereby notified to appear in this court on Friday the 3d day of April next at 11 o'clock, a m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B HAGNER, Justice.
Test; 11 H J. RAMSDELL Register of Wills.
EDWARDS & BARNARD, Solicitors.

THIS IS TO GIVE NOTICE,

That the subscriber, of Springfield, Vermont, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Reuben A. Bacon, late of the District of Columbia, dec'd

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 7th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of March, 1885.

ROBERT M. COLBURN,
11 Executor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Alfred Falconer, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of March, 1885.

11 ERASTUS M. CHAPIN, Executor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business. March 6th, 1885

In the matter of the Estate of Elisa Young, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of said deceased, has this day been made by Josephine Young and Rebecca E Young

All persons interested are hereby notified to appear in this Court on Friday, the 3d day of April next at 11 o'clock, a. m. to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B HAGNER, Justice.
Test: H. J RAMSDELL, Register of Wills.
IRVING WILLIAMSON, Solicitor. 10

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business March 13, 1885

In the matter of the Estate of John D. Nutting, late of the Police Force of the District of Columbia deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Charles E Creecy.

All persons interested are hereby notified to appear in this court on Friday, the 3d day of April next at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test 11 H J. RAMSDELL, Register of Wills.
V B. EDWARDS, Solicitor

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA Holding a Special Term for Orphans Court Business. March 13th, 1885

In the matter of the Estate of Moses Meredith, late of the Police Force of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Charles E. Creecy

All persons interested are hereby notified to appear in this court on Friday, the 3d day of April next at 11 o'clock, a m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

By the Court A B HAGNER, Justice.
Test 11 H. J. RAMSDELL, Register of Wills.
V B EDWARDS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, March 13th, 1885

In the matter of the Estate of W. Wallace Grant, late of the Police Force of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Charles E. Creecy

All persons interested are hereby notified to appear in this court on Friday, the 3d day of April next at 11 o'clock, a m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 11 H. J. RAMSDELL Register of Wills
V. B. EDWARDS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business March 13, 1885.

In the matter of the Estate of Samuel W Koontz, late of the Police Force of the District of Columbia deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Charles E Creecy

All persons interested are hereby notified to appear in this court on Friday the 3d day of April next at 11 o'clock, a m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the court. A. B. HAGNER, Justice.
Test 11 H J RAMSDELL, Register of Wills.
V. B EDWARDS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business March 13, 1885

In the matter of the Estate of Augustus Wusterfeld late of the Police Force of the District of Columbia, deceased

Application for Letters of Administration on the estate of the said deceased has this day been made by Charles E Creecy

All persons interested are hereby notified to appear in this court on Friday the third day of April next at 11 o'clock, a m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B. HAGNER, Justice.
Test 11 H J RAMSDELL, Register of Wills.
V. B. EDWARDS, Solicitor.

Legal Notices.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary, on the personal estate of Daniel Brown, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of March, 1885.

11 THEODORE his mark WILLIAMS, Executor
GORDON & GORDON, Solicitors.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Elizabeth Wirt Goldsborough, late of the District of Columbia, deceased

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of March next; they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 13th day of March, 1885.

WM. WIRT, Administrator.
R. B. LEWIS, Solicitor. 11

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business March 13, 1885.

In the case of Randall Hagner and Samuel Maddox, Administrators c. t. a., of Ann Randall, deceased, the Administrators c. t a. have, with the approval of the court, appointed Friday, the 10th day of April, A. D. 1885, at 11 o'clock a. m, for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrators c. t a will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 11 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

FRANKLIN P. SELZER ET AL. v. GEORGE A. HASKE ET AL. } No. 8901. Eq. Doc. 24.

Upon consideration of the report of Charles A. Walter, trustee herein, and of the report of the Auditor filed herein on the 11th day of February, 1885, upon order of reference passed in this cause on the 14th day of January, 1885; and it appearing to the court that the defendant, Ruppert, has complied with the terms of sale as provided in said decree, by paying to the trustee in this cause the sum of $231. 27, as ascertained by said Auditor's report to be due by him under said decree, it is, therefore, by the Court, this 18th day of February, 1885, ordered that the sales to said Ruppert of part of lots 13 and 14 in square 762, beginning at the northwest corner of said lot 13, and thence running southwesterly along the western line of said lot, 132 feet 6 inches, thence south 18 feet, thence east 36 feet 7 inches, thence north 26 feet 10 inches, thence east 4 feet 6½ inches, thence north 21 feet 5½ inches, thence east 1 foot 10 inches, thence northeastwardly to a point 30 feet 6 inches, from Pennsylvania Avenue on a line drawn parallel with and 16 feet from the western line aforesaid, thence along said line to said Avenue, and thence along said Avenue 16 feet to the place of beginning; and part of lot 6 in square 534 beginning at a point on the line of a 15 foot alley in said square, 113 feet 5½ inches from the southeast corner of said lot, and running thence west 24 feet 5½ inches thence north 113 feet feet 5½ inches, to a thirty foot alley in the rear of said lot, thence east on the line of said alley 24 feet 8½ inches to said 15 foot alley, thence south on the line of said alley 113 feet 5½ inches to the place of beginning, to be and the same are hereby ratified and confirmed, unless cause to the contrary be shown on or before the 18th day of March, 1885:

A. B HAGNER, Justice,
A true copy. Test: 8-3 R. J. MEIGS, Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business March 13, 1885

In the matter of the Estate of Peter A. Becker, late of the Police Force of the District of Columbia deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Charles E. Creecy.

All persons interested are hereby notified to appear in this court on Friday, the 3d day of April next at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 11 H. J. RAMSDELL, Register of Wills.
V B. EDWARDS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Holding a Special Term for Orphans Court Business. March 13th, 1885

In the matter of the Estate of Samuel Lester, late of the Police Force of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Charles E. Creecy.

All persons interested are hereby notified to appear in this court on Friday, the 3d day of April next at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test 11 H. J. RAMSDELL, Register of Wills.
V. B EDWARDS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, March 13th, 1885.

In the matter of the Estate of Benjamin F. Barker, late of the Police Force of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by William F. Barker.

All persons interested are hereby notified to appear in this court on Friday, the 3d day of April next at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 11 H. J. RAMSDELL Register of Wills
V. B. EDWARDS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 13, 1885.

In the matter of the Estate of Charles Ashton, late of the Police Force of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Jane Ashton

All persons interested are hereby notified to appear in this court on Friday the 3d day of April next at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 11 H J. RAMSDELL, Register of Wills.
V. B. EDWARDS, Solicitor.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Peter D Posey, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 13th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of March, 1885.

SAMUEL C. BUSEY, Executor.
JAS. H. SAVILLE, Solicitor 11

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business March 6th, 1885.

In the matter of the Estate of Nellie Jidt, late of the City of Washington, District of Columbia, deceased

Application for Letters of Administration on the estate of the said deceased has this day been made by Henrietta C. Sinclair and Mary J Sinclair.

All persons interested are hereby notified to appear in this court on Friday, the 3d day of April next at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

By the Court. A B. HAGNER, Justice.
Test 10 H. J. RAMSDELL, Register of Wills.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Frances A Lockwood, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of February, 1885.

MARGARET M. LOCKWOOD,
HENRY M. BAKER, Solicitor 9 Executrix.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 24th day of February, 1885.

SARAH W. GARDNER v. GRENVILLE G GARDNER. } No. 9:26, Equity.

On motion of the complainant, by Mr. Theodore H N. McPherson, her solicitor, it is ordered that the defendant, Grenville G. Gardner, cause his appearance to be entered herein on or before the first rule day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice
True copy. Test: 9 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 26th day of February, 1885.

FRANCES E. BURNS v. ARTHUR P BURNS } No. 2341. Eq. Doc 24.

On motion of the plaintiff, by Messrs. Miller and Forrest, her solicitors, it is ordered that the defendant, Arthur P. Burns, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER Justice.
A true copy. Test: 9 R. J. MEIGS, Clerk

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 17th day of February, 1885

HUGH DOWNEY ET UX v. MARGARET E. KING, JAMES I. KING, HUGH TUOHY, BRIDGET TUOHY and PATRICK LEONARD } No 9634. Eq. Doc 24.

On motion of the plaintiffs, by Mr. N. Dumont their solicitor, it is ordered that the defendants, Margaret E King and Patrick Leonard, cause their appearance to be entered herein on or before the first rule day, occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B HAGNER, Justice.
A true copy Test: 9-3 R J MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Mary Shannon, late of the District of Columbia deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of February next; they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 28th day of February, 1884.

JAS. FULLERTON,
9 Administrator.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business March 13, 1885

In the matter of the Estate of Alexander Tait, late of the Police Force of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Victoria H Hough

All persons interested are hereby notified to appear in this court on Friday, the 3d day of April next at 11 o'clock. a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B HAGNER, Justice.
Test 11 H J. RAMSDELL, Register of Wills.
V B. EDWARDS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA Holding a Special Term for Orphans Court Business. March 13th, 1885

In the matter of the Estate of George H Walker, late of the Police Force of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Mary O Walker.

All persons interested are hereby notified to appear in this court on Friday, the 3d day of April next at 11 o'clock, a m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

By the Court A B. HAGNER, Justice.
Test 11 H J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, March 13th, 1885

In the matter of the Estate of Jefferson Robinson, late of the Police Force of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Matilda Robinson.

All persons interested are hereby notified to appear in this court on Friday, the 3d day of April next at 11 o'clock, a m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 11 H. J. RAMSDELL Register of Wills.
V. B. EDWARDS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 13, 1885.

In the matter of the estate of John A. W. Clarvoe, late of the Police Force of the District of Columbia deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Martha R. Clarvoe.

All persons interested are hereby notified to appear in this court on Friday the 3d day of April next at 11 o'clock, a. m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test 11 H J RAMSDELL, Register of Wills.
V. B EDWARDS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business March 13, 1885

In the matter of the Estate of David R. P. Bigley, late of the Police Force of the District of Columbia, deceased

Application for Letters of Administration on the estate of the said deceased has this day been made by Mary Alice Bigley

All persons interested are hereby notified to appear in this court on Friday the tenth day of April next at 11 o'clock, a m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test 11 H J RAMSDELL, Register of Wills.
V. B. EDWARDS, Solicitor.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 3d day of March, 1885.

GEORGE T. JACOBS v. JOHN W POST and another. } No. 9335. Eq. Doc. 24.

On motion of the plaintiff, by Mr Daniel O'C. Callaghan, his solicitor, it is ordered that the defendant, John W. Post, cause his appearance to be entered herein on or before the first rule-day, occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 10 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE

That the subscriber of District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamenary on the personal estate of John Voegler, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of March, 1885.

10 JOANNETTE VOEGLER,
LOUIS SCHADE, Solicitor. Adminstratrix.

THIS IS TO GIVE NOTICE.

That the subscriber, of Lynchburg, Virginia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Edward Henry Cumpston late of Alexandria, Virginia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of February, 1885.

MARY M. CUMPSTON, Ex'x.
J. J. DARLINGTON, Solicitor. 10

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business March 7th. 1885.

In the matter of the Estate of Isaac H. Taylor, late of Boston, Mass deceased

Application for Letters of Administration on the estate of the said deceased, has this day been made by Sallie B. Taylor, of Plymouth County, Mass

All persons interested are hereby notified to appear in this Court on Friday the 27th day of March next at 11 o'clock, a. m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B HAGNER, Justice.
Test H. J RAMSDELL, Register of Wills.
O. D. BARRETT, Solicitor. 10

THIS IS TO GIVE NOTICE,

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Josiah Perry, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of February next; they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 20th day of February, 1885.

9 MARY PERRY, Executrix.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Elizabeth Fisher, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of February, 1885.

JOSEPHINE WALDECKER,
O. G. ECKSTEIN, Solicitor 9 Executrix.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, March 13, 1885

In the matter of the Estate of Leon Sidi, late of Smyrna, Asia Minor, deceased.

Application for Letters of Administration on the Estate of the said deceased, has this day been made by John E. Risley, of New York, N Y

All persons interested are hereby notified to appear in this court on Friday the 3d day of April next at 11 o'clock. a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B HAGNER, Justice.
Test 11 H. J. RAMSDELL, Register of Wills.
JOHN PAUL JONES, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 13, 1885.

In the matter of the Estate of Gorge A. Gordon, late of Washington, D. C., deceased.

Application for Letters of Administration of the Estate of the said deceased, has this day been made Elizabeth R Gordon.

All persons interested are hereby notified to appear in this court on Friday the 3d day of April next at 11 o'clock, a. m., to show cause why the said Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test 11 H. J. RAMSDELL, Register of Wills.
GORDON & GORDON, Solicitors.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 13, 1885

In the matter of the Estate of Dennis Austin McCarthy, late of the City of Washington, District of Columbia, dec'd.

Application for Letters of Administration on the Estate of the said deceased, has this day been made by Anne McCarthy of the said City and District.

All persons interested are hereby notified to appear in this court on Friday the tenth day of April next at 11 o'clock, a m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test 11 H J RAMSDELL, Register of Wills.
JOHN E. MCNALLY, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 6th, 1885.

In the matter of the Estate of Wiley Lane, late of the City of Washington, District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Whitmell Lane, of North Carolina

All persons interested are hereby notified to appear in this court on Friday, the third day of April, next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

By the Court. A. B. HAGNER, Justice.
Test: 10 H. J. RAMSDELL, Register of Wills.
JAMES H. SMITH, Solicitor.

THIS IS TO GIVE NOTICE:

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Samuel Pimphrey, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of March next: they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of March, 1885.

C. C. MEADOR,
J. J. DARLINGTON, Solicitor. 11 Administrator.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, March 13th, 1885

In the matter of the Estate of Samuel T. Crown, late of Washington, D C, deceased.

Application for Letters of Administration on the Estate of the said deceased, has this day been made by William S. Crown

All persons interested are hereby notified to appear in this court on Friday, the 3d day of April next at 11 o'clock, a m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 11 H. J. RAMSDELL Register of Wills
GORDON & GORDON, Solicitors.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February 20, 1885

In the matter of the Estate of Isadora C. Causten, late of Washington, D. C., deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Lida B Causten, praying that letters be granted to Walter Ker

All persons interested are hereby notified to appear in this court on Friday, the 20th day of March next, at 12 o'clock m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B HAGNER, Justice.
Test: 9 H. J. RAMSDELL, Register of Wills.
JAMES H TAYLOR Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 6th, 1885.

In the matter of the Estate of John W. Tucker, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Mollie Weaver, for appointment of Albert F. Fox as Administrator.

All persons interested are hereby notified to appear in this court on Friday, the 3d day of April next at 11 o'clock, a. m, to show cause why Letters of Administration to Albert F. Fox on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court ALEXANDER B. HAGNER, Justice.
Test 10 H. J. RAMSDELL, Register of Wills.
H. B MOULTON, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 6th, 1885.

In the matter of the Estate of James H. Causten, late of the District of Columbia, deceased.

Application for Letters of Administration d. b n, c. t. a., on the Estate of the said deceased has this day been made by Josephine Young and Rebecca E. Young for the appointment of Thomas E. Waggaman.

All persons interested are hereby notified to appear in this court on Friday, the 3d day of April, next, at 11 o'clock a. m, to show cause why the said Letters on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: H. J. RAMSDELL, Register of Wills.
IRVING WILLIAMSON, Solicitor. 10

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 13, 1885.

In the matter of the Estate of Charles Miller.

Application for Letters of Administration on the estate of Charles Miller, late of the District of Columbia, has this day been made by Henry R. Miles.

All persons interested are hereby notified to appear in this court on Friday the 3d day of April next at 11 o'clock, a. m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice
Test: 11 H J. RAMSDELL, Register of Wills.
A C. RICHARDS, Solicitor,

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Washington Law Reporter

WASHINGTON - - - - - - March 21, 1885.

GEORGE B. CORKHILL - - - EDITOR

WE are glad to notice that Dr. Francis Wharton has been appointed by Secretary Bayard legal adviser upon questions of International Law.

Dr. Wharton was born in Philadelphia, in 1820, and graduated from Yale college in 1839. At twenty-two years of age, he was appointed Assistant Attorney General during Gov. Shunk's administration. He is now a lecturer on International Law in the Boston University. With Dr. D. D. Field and President Woolsey, he represents this country in the Institute of International Law, and the University of Edinburgh has recently conferred upon him the degree of LL. D. During the administration of President Polk, he was, for a time, editor of the *Pennsylvanian*, and one of the editors of the *Democratic Review*. Dr. Wharton's works on the Conflict of Laws, International Law, Commentaries on American Law, Criminal Law, &c., are the leading works upon the subjects in this country; and his works on Criminal Law have had remarkable success, the ninth edition being now in press. They have also been translated into German and Spanish. He is now one of the editors of the leading journal of International Law published in Paris.

Dr. Wharton is of old Pennsylvania stock, being a relative of Gov. Wharton, the first revolutionary governor of Pennsylvania, and a nephew of Mr. Rawle, the first United States District Attorney. He is a strong democrat in principle. His appointment gives universal satisfaction.

THE Supreme Court of Montana, in the case of Anderson v. Hulme et al., W. C. Rep., Vol. 5, N. 11, Jan. 8, 1885, decide, that in an action against an agent to recover money had and received to the plaintiff's use, the complaint must aver a demand and refusal to pay. The court, after stating the facts, conclude: "It is alleged that the defendants have received money for the sale of lots, for which suit is brought. The defendants were the agents of the plaintiff to sell certain town lots, and to collect and receive the purchase money therefor. There is no averment in the complaint of a demand for the money collected by the defendants for the plaintiff as his agents, or of a refusal to pay. This action is founded on a supposed breach of trust, which must be made out affirmatively before the agent can be charged. In Taylor v. Bates, 5 Cowen, 376, it has been held that an action would not lie against an attorney for money collected for his client until after a demand or a request to remit. The learned judge said the contrary doctrine would be in opposition to the nature of the defendant's trust, as well as against justice and good faith. The same point was adjudged in Rathburn v. Ingalls, 7 Wend., 320, where the plaintiff was non-suited, although several years had elapsed between the time of collecting the money and the bringing of the action. See Cooley v. Betts, 24 Wend., 203. In this case, Justice Bronson says: "It is the duty of an agent to render an account of his transactions to his principal within a reasonable time, and when it appears that he has neglected to do so, an action for not accounting may, perhaps, be maintained without a demand. But here there was no evidence to show that the defendants had not rendered an account. And, besides, the action is for not paying over the proceeds of the goods, the special counts being laid out of the case; and, in such action, it is necessary to show a demand or instructions to remit.' In Reind v. Cross, 6 Cal., 31, the complaint alleged that the defendant contracted to carry certain freight from the port of Acapulco to Valparaiso, in consideration of a certain sum of money, a portion of which was paid by the plaintiff in advance. That defendant received said freight on board his vessel, and departed on the voyage, but did not perform his contract, because of the loss of his vessel at sea. The complaint also contained a second for money had and received to the use of the plaintiff. The court say: 'The second count is bad, because it is not alleged that demand had been made on the defendant. A party receiving money to the use of another is rightfully in possession until the same is demanded.' The evidence is

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not in the record, and we cannot presume that there was proof to supply the omitted averment of a demand. The verdict must be sustained by the pleadings, and they are silent as to a demand. Judgment reversed, and cause remanded for a new trial."

In the case of Cole v. W. U. Telegraph Co., Supreme Court of Minnesota, Feb. 14, 1885, 22 N. W. Rep., 385, the court held, that one who filled up and signed a message upon a blank form containing this condition: "No claim for damages shall be valid unless presented in writing within thirty days after sending the message;" and beneath the blank space for the message and place for signature, was printed in large type: "Read the notice and agreement at the top," was presumed to have had notice of such condition, and was bound by it as part of his contract with the company; and also, that it was a reasonable stipulation, and not contrary to public policy. The court said: "Under the circumstances of the case, as they appear, he must be presumed to have had notice of its terms and conditions. Wolf v. Telegraph Co., 62 Penn. St., 87; S. C., 1 Am. Rep., 387; Belger v. Dinsmore, 51 N. Y., 171; S. C., 10 Am. Rep., 575. It follows, therefore, that the terms embraced in the printed form became part of the contract between the plaintiff and the company, and are binding on him in so far as they are reasonable regulations. Schwartz v. Telegraph Co., 18 Hun., 159; Young v. Telegraph Co., 65 N. Y., 167; Grinnel v. Telegraph Co., 113 Mass., 229; S. C., 18 Am. Rep., 485; Heimann v. Telegraph Co., 57 Wis., 566. It cannot be contended that a regulation requiring the sender of a message to present his claim for damages in writing promptly to the company, is an unreasonable one. Considering the character of its business, such regulations would be necessary for its own protection, and to enable it reasonably to ascertain the facts in the case, and to secure or preserve the proper evidence. It is not a regulation intended to shield the company from the consequences of a neglect of duty on its part, but prescribing a duty to be performed by the plaintiff, before he should be entitled to maintain his action. Wolf v. Telegraph Co., *supra*. A similar rule is well established in insurance cases. Young v. Telegraph Co., 34 N. Y. Sup. Ct., 392. No reason is apparent why thirty days is not a reasonable limit to fix in such cases, and no suggestion is made that the plaintiff did not have ample opportunity within that time to present his claim. Heimann v. Telegraph Co., *supra*. It is, however, expressly admitted that he did not comply with such condition, and no claim was made till suit brought, more than sixty days after the despatch was sent. He was not, therefore, entitled to recover."

We have received from the publishers copies of the *Columbia Jurist*, a recent weekly journal published by the students of the Columbia College Law School of New York.

It would, perhaps, be considered that such matter as would be found in this journal would be of no use to practicing attorneys; but such is not the fact. There is contained in it an abundance of information which will be desirable to every lawyer. The moot court cases are very interesting, and some vital questions are frequently discussed in a creditable manner. Many matters will be found discussed in their journal which are of great value and interest. The whole make-up of it reflects credit upon its publishers, and we are happy to place it upon our exchange list. We wish it success.

A Notable Book.—We have just received from the publisher a handy little volume entitled "Gaskell's Hand-Book of Useful Information." It contains Calculations, Trade Secrets, Rules, Business Forms, Legal Items, and Statistical Tables of practical value for Mechanics, Farmers, Lumbermen, Bankers, Bookkeepers, Politicians, and all classes of workers in every department of human effort, from the household to the manufactory; and a compilation of facts for ready reference on almost every subject. It is in fact a portable encyclopædia.

No more valuable book has ever been offered, as it contains so much information of practical value in every day life. It is nicely gotten up, and will be sent to any address by mail, post paid, on receipt of 25 cents, by Geo. W. Ogilvie, Publisher, 230 Lake st., Chicago. Illinois.

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Supreme Court District of Columbia

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY

THE BALTIMORE & OHIO RAILROAD CO.
vs.
MARGARET HETZEL ET AL.

Decided March 10, 1885.
The CHIEF JUSTICE and Justices WYLIE and JAMES sitting.

1. H. recovered $843.36 damages of a railroad company for obstructing the highway, and the General Term, affirming the court below, entered judgment for that amount, March 4, 1876. H., not satisfied with the amount of the judgment, appealed to the Supreme Court of the United States, where the judgment was affirmed. H. filed the mandate in the General Term, June 26th, and the court that day entered judgment for $843.36, with interest from March 4, 1876. September 3d, following, the defendant company filed a bill in equity alleging improper representations in procuring the judgment on the mandate, also that the mandate contained no order to allow interest, and praying that H. be required to accept the principal sum only in satisfaction of the judgment. The defendant on oath denied improper representations. Upon hearing on bill and answer the court below dismissed the bill.

Held, That as there was no proof that the entry of the judgment was irregular the bill was properly dismissed.

2. Baptist Church v. Railroad Company, 2 Mackey, 458, commented upon as to whether judgments in tort carry interest in this District.

STATEMENT OF THE CASE.

Appeal from a decree in Special Term dismissing a bill in equity and dissolving an interlocutory injunction. The court at the same time heard argument upon a motion filed in General Term September 8, 1884, to vacate for alleged irregularity a judgment entered at a previous term, the motion involving a consideration of the same subject matter. The facts are briefly as follows:

In 1873, the defendant, Mrs. Margaret Hetzel, entered suit at law against the complainant for alleged injury to her property at the corner of D and North Capitol streets by reason of the unauthorized occupation of the two streets by the complainant. The case was sent to a referee, who awarded damages to the amount of $843.86. Exceptions were taken by both sides. The exceptions were certified to the General Term, and were all overruled and judgment entered for the plaintiff for the amount of the referee's award. This was on March 4, 1876.

On March 27, 1876, the plaintiff, Mrs. Hetzel, sued out a writ of error, and took the case to the Supreme Court of the United States. In May, 1880, the judgment was there affirmed. The mandate was not taken out by the plaintiff for more than four years afterwards, and was filed in this court June 26, 1884.

On March 20, 1876, an attachment was laid in the hands of the company by a judgment creditor of Mrs. Hetzel. On the 22d of March, 1876, another attachment was laid, and December 16, 1879, a third attachment, by a third creditor. The amounts sought to be secured by these attachments largely exceeded the amount of the judgment against the company. The company answered the interrogatories in the attachments, setting forth the facts of the judgment against it, and stating that that was its only indebtedness to Mrs. Hetzel. These attachments remained in force until June, 1884, when they were settled at the time the mandate was filed.

In January, 1881, the company instituted a suit in equity in the nature of a bill of interpleader, alleging that they could not safely pay the judgment because of the attachments in which suits they had been garnished, and asking leave to pay the money into the court. A demurrer to the bill was sustained on the ground that the complainants therein denied their liability to pay interest and for other defects. No further proceedings in this direction were had.

The company were notified by letter, June 26th, that the mandate had been filed and the attachments dissolved; and they were requested to pay Mrs. Hetzel's counsel the amount of the judgment with interest from March 4, 1876. They replied, July 5th, that the letter was duly received and that the matter would be reported to the company at Baltimore, and no doubt receive prompt attention.

June 26th, the day the mandate was filed, the court in General Term entered judgment in the following words:

"The plaintiff having prosecuted a writ of error to the Supreme Court of the

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United States from the judgment of this court of March 4, 1876, which was in her favor for $843.36 damages, and $101 for costs of suit, and the said Supreme Court of the United States having affirmed said judgment with costs, and adjudged that the defendant recover the same against her and have execution therefor, and remanded the cause to this court, and command this court that such execution and proceedings be had in the cause as according to right and justice, and the laws of the United States ought to be had, said writ of error notwithstanding, it is thereupon, by this court, considered, that the plaintiff have execution of her aforesaid damages against the defendant, with interest thereon from March 4, 1876, aforesaid, less the cost of the writ of error aforesaid."

The mandate said nothing about interest.

Upon the 3d of September, 1884, the company filed a bill, alleging the facts as to the attachments, and that they were garnished in those suits; that the mandate was filed without notice to them, and obtained by improper representations of counsel; that the entry of interest upon the judgment was in violation of the terms of the mandate, and that the judgment was entered so near the end of the term that the complainants were deprived of an opportunity to have it corrected. The bill prayed that defendants be restrained from levying execution, and that the complainants be allowed to pay the principal sum and costs into court, and the defendants be required upon such payment to enter the judgment satisfied.

The defendants, upon oath, denied improper representations, and otherwise answered the bill. On the coming in of the answers, September 11, 1884, the court ordered the principal and costs to be paid to Mrs. Hetzel, or her attorney, and the interest to be paid into court, and continued the restraining order until final hearing. No testimony was taken; and at the hearing, February 19, 1885, upon bill and answer, the court dissolved the injunction and dismissed the bill, with costs to defendants. From this decree the company appealed.

The company likewise filed a motion in General Term, September 8, 1884, to vacate the judgment for substantially the same reasons as set forth in the bill in equity. The plaintiff, Mrs. Hetzel, having levied upon the property of the company immediately after the dissolution of the injunction, the court in General Term, upon motion of the company, advanced the cause for hearing.

M. F. MORRIS for plaintiff:

1. A judgment upon tort does not bear interest at common law, and there is no statute law in this District giving interest upon such a judgment.

By section 829 of the Revised Statutes for the District of Columbia, judgments in actions upon contract bear interest, and the amount which is to bear interest and the time for which interest is to run, are remitted to the verdict of the jury. By its implication, this necessarily excludes from the incident of interest all judgments based upon actions for torts.

By section 713 of the same statutes, it is provided that "the rate of interest upon judgments and decrees * * * shall continue to be six dollars upon one hundred dollars for one year * * *." But this plainly does not propose to make any new law; it provides only for the continuance of such interest as was then in force. And this is the more apparent, inasmuch as the object of the statute was to allow interest, by special agreement of parties, at any higher rate up to ten per cent.

2. The rules of the Supreme Court do not apply in this case; and it is plain that the statutes of Henry VIII, referred to by Mr. Justice Hagner in the opinion in the case of the Fifth Baptist Church *vs.* The Baltimore & Potomac Railroad Company, 2 Mackey, 458, do not apply. In that case the defendant appealed, and this court allowed interest during the pendency of the appeal, upon the sole ground that the mandate of the Supreme Court provided in express terms for interest.

3. The plaintiff in this case, by her appeal, prevented the defendant from paying the judgment, and thereby necessarily waived interest upon it.

4. The defendant ought not to be charged with interest while the money in its hands was under attachment.

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Boyd v. Mattingly (20 Howard, 132) shows the only exception to the rule, that where the garnishee is charged with having used the money, and to have realized interest or benefit from it, the party seeking to charge him must show the use. The court certainly cannot infer such use.

5. The judgment ought not to bear interest, because the mandate of the Supreme Court does not authorize interest.

6. The complainant had not the opportunity of being heard before the entry of the judgment upon the mandate, and it moved as soon as it reasonably could. It ought not, therefore, to be precluded now from having this question of interest investigated.

FRANK W. HACKETT for defendant:

We filed the mandate June 26, 1884, and on the same day sent a letter to counsel for railroad, acquainting them with the fact. The admit that they duly received it. The court adjourned finally July 5th.

Having neglected to move in the General Term during the term at which the judgment was rendered, and there being no fraud or accident shown, equity will not relieve. Ins. Co. *vs.* Hodgson, 7 Cr., 322; Embry *vs.* Palmer, 107 U. S., 11.

Nor will the court upon motion disturb the judgment entered last term. Nothing in the mandate forbade this court to enter judgment as they did. The allowance of interest was considered by the court. It was in no sense an "irregularity." The court did just what it intended to do; and to say that it did not look at the record is to impute neglect to the court. The question is not open whether on a review of the case this court would enter precisely the same judgment. The only question is, was that judgment what the court at the time intended it should be? This precludes a discussion of what the law is upon such a state of facts as the record then disclosed. Whether right or wrong, the court decided it.

An appellate court cannot reverse or annul, or materially change its final judgment after the term in which it was rendered. *Ex parte* Sibbald *vs.* U. S., 12 Peters, 488; Bridge Co. *vs.* Stewart, 3 How., 424.

Mr. Chief Justice CARTER delivered the opinion of the court.

We think that this application comes too late. The mandate of the Supreme Court of the United States came down June 26th, 1884, commanding us that such proceedings be had in the cause, as, according to right and justice and the laws of the United States, ought to be had. We, thereupon, entered judgment on that day, with interest from March 4th, 1876, and on the 5th of July following we adjourned *sine die.*

We added interest, it seems, to the judgment. That ordinarily we have power to give interest is manifest, indeed, it is not seriously denied; but whether this particular judgment was, under the circumstances, entitled to have interest added is a matter of debate. We determined that it was.

Can that determination be shaken by a bill in chancery? Clearly not, if the judgment was regularly entered, and the error alleged is an error of law. The remedy for that has expired with the term. Was this a clerical error? No evidence has been brought forward to convince us that it was irregulary entered. We have only the counsel's logic that, from the nature of things, we could not have deliberated upon the question of interest. But it will not do to say that counsel says that the court did not deliberate—did not consider the question of interest; but the record says we did.

It has been argued that the defendant company ought not to pay interest on this judgment because it had been garnished in several suits, and that at the time of rendering our judgment in obedience to the mandate, we could not have known of the fact of these garnishments as there was nothing in the record before us to show it. Bond v. Mattingly, 20 How., 132, has been cited to show that a garnishee is not chargeable with interest. But even if all this be true the company in this case had a full opportunity to have brought the fact of the garnishments to our attention during the term in which this judgment was rendered. It is shown that Mrs. Hetzel's counsel, on the day of filing the mandate, wrote a letter to the company's counsel informing them of the

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fact; and they admit that they received it. They had several days during the term to file their motion to vacate the judgment, and, therefore, there is no ground to allege surprise.

Much stress has been laid upon the appeal which was taken to the Supreme Court. Mrs. Hetzel got judgment for $843. She was not satisfied and appealed. It is claimed that she thereby caused the delay in the Supreme Court, and the company ought not to pay interest during that time. But this is not a correct view of the character of the office of that appeal. It was not that she complained of a denial of justice in recovering $843; but she complained that she had not got enough. She went to that court to get more. Her appeal was not a remittitur to the railroad company of the amount she had recovered here, but a reaching after higher compensation through the agency of that court.

We do not have to decide in this hearing whether a judgment in tort carries interest in this District. Ordinarily a judgment in tort does not carry interest; still there are indications in our statutes that it does. We had that subject under consideration in Baptist Church v. Baltimore & Potomac Railroad Company (2 Mackey, 458), and though it was not necessary to decide it, and we made no decision, yet we were all of opinion that such ought to be the law. It certainly is justice in the present case that interest should follow. That question came up when we entered a judgment on the mandate. There was nothing irregular about the entry of judgment, and it is now too late to reverse or alter it. Our arm is not long enough to reach it.

The bill is therefore dismissed, and the motion to vacate overruled.

IN the case of Button v. Hoffman, Am. L. R., V. 13, N. 9, September, 1884, Sup. Ct. of Wisconsin, it is held that one who, by purchase or otherwise, becomes the owner of all the capital stock of a private corporation, does not thereby become the legal owner of its property, and cannot maintain replevin therefor in his own name.

United States Supreme Court.

No. 756—OCTOBER TERM, 1884.

SAMUEL A. PEUGH, Appellant,

vs.

HENRY S. DAVIS.

Appeal from the Supreme Court of the District of Columbia.

Mr. Justice MILLER delivered the opinion of the court.

This case was before us at the October Term, 1877, and the question then was whether certain instruments of writing, made by Peugh to Davis, constituted an absolute conveyance of lots in the District of Columbia, or were in the nature of a mortgage security for loan of money. The court was of opinion that on all the facts of the case the latter was the true construction of the transaction between the parties.

The court below was directed to permit the plaintiff, Peugh, to redeem the property by the payment of the loan, with interest at six per cent. per annum, and, as it appeared that the defendant had taken possession of the property, it was said in the opinion that he "should be charged with a reasonable sum for the use and occupation of the premises from the time he took possession in 1865, and allowed for the taxes paid and other necessary expenses incurred by him." 96 U. S. R., 332.

Upon the return of the case to the Supreme Court of the District of Columbia, it was referred to an auditor to ascertain the sum necessary to redeem on that basis. Two reports were made, neither of which were entirely acceptable to the parties or to the court, which finally, by a decree in General Term, allowed nothing for use and occupation by defendant, but did make an allowance for a sum received from the United States for its use, after deducting from this latter sum the amount paid to an agent for its collection.

The appellant assigns for error that no allowance was made him for the use and occupation by defendant.

The reply to this is that he never used and occupied it or received any rents, except the amount for which he is charged as received from the government.

The lots were open, unenclosed, with no buildings on them, and no actual possession or use of them was had by the defendant. His possession was merely constructive under his interpretation of the contract that the land was his own. The witnesses say it was

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worth nothing in its actual condition, and no evidence is given to the contrary.

It is urged that a sum equal to the interest on the money borrowed by Peugh should be allowed as rent or for occupation, from the time Davis asserted his ownership and possession. We can see no reason for this, and it would have been in conflict with the instruction contained in the opinion of this court that he "should be charged a reasonable sum for the use and occupation." If this was worth nothing, that was the end of that matter.

It is said that during the period in question the land rapidly rose in value and afterwards declined. That Peugh could have sold it, and probably was offered a sum for it which would have left him a large profit, and that he ought in this transaction to set off this loss against the amount he must pay to redeem.

This is not allowance for use and occupation. It is damages for a tort. It cannot be recovered in this suit if it could be recovered in any.

The short answer to all this is that Mr. Peugh owed the money he had borrowed from Davis. What he is now claiming in the original suit is the right to pay the money and have a re-conveyance of the land. Nothing hindered during all this time that he should pay this money; and if, as he alleges, Davis denied his right to do so, then he should have made a regular and lawful tender of the amount due.

If he had done so, the interest would have ceased to run against him, and the amount he is now required to pay would have been diminished by more than one-half.

A lame attempt is made to show that he did make this tender. Some evidence is offered that he told Davis he was ready to account with him and pay what was due, and that he had the money with him.

But in order to make a tender that would have caused the interest to cease, he should have ascertained for himself the sum due, or have fixed upon a sum which was sufficient, and then made a formal tender by counting out or offering that sum to Davis distinctly and directly as a tender.

The fact that he did not do this is the answer to all that he now claims in this court. He has been permitted to redeem. His own assertion of that right has been allowed him; but if he ever had this money and was ready and willing to pay it, he did not do so. He did not produce or show it. He did not fix the amount he was ready to pay; but he took the money away with him, and used it himself, and there is no hardship in requiring him to pay six per cent. interest on it if he wishes to redeem the lots.

The decree of the Supreme Court of the District is affirmed.

United States Court of Claims

JAMES H. DENNIS *vs.* THE UNITED STATES.

1. A committee of Congress may transmit to the Court of Claims, under the Bowman Act, any claim which is not barred from settlement in *all* the executive and judicial branches of the government.
2. There is no general statute of limitation applicable to the settlement in the Treasury Department of claims within its jurisdiction.
3. The accounting officers have no jurisdiction of claims for unliquidated damages founded on neglect or breach of obligations contrary to the terms of a contract and not necessarily arising therefrom.
4. But they have jurisdiction of claims on contracts which arise necessarily and of course from otherwise fulfilled and executed agreements, such as claims for the value of goods purchased or work done where no price was agreed upon, although such claims are technically for unliquidated damages.

RICHARDSON, C. J., delivered the opinion of the court.

This case was transmitted to the court by the Committee on Claims of the House of Representatives, by order of July 5, 1884, under the provisions of the Bowman act (22 Stat. L., 485).

On the first day of November, 1884, the claimant filed his petition, according to the rules, setting out several causes of action. The Assistant Attorney General now moves to dismiss the case for want of jurisdiction, alleging as the ground for it that the claims appear to be barred by the Statute of Limitation, which, by section three of said act, deprives the court of jurisdiction.

In the cases of McClure & Porter (19 C. Cls., 18), we held that claims were not barred within the meaning of that section, if they were open to investigation, adjustment or settlement by any tribunal or public officer. We also held that there was no statute of limitations applicable to the statement and adjustment of the ordinary claims and accounts of which the departments have jurisdiction.

If, therefore, the petition sets out any claims which are within the jurisdiction of the accounting officers of the bureau, they are not barred, and may be transmitted to this court for trial and the finding of facts.

We think that such claims are set out in the petition. The first nine items or counts

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allege substantially that between the 31st of October, 1868, and April, 1872, at the request of the United States, the claimant did work and furnished material for the defendants, which they actually received and accepted, and promised to pay him the reasonable value thereof, and have not paid the same. These allegations set out claims which come within the ordinary duties of the accounting officers of the Treasury Department to settle and adjust under the provisions of Revised Statutes. That is sufficient to take the case out of the provision of the last clause of the third section of the Bowman act, even though there be other causes of action set out in the petition which have been wholly barred, and which no tribunal or public officer has the power to settle and adjust.

The tenth, eleventh and thirteenth items or counts allege breaches of contract on the part of the defendants other than in the non-payment of money due for work done or materials furnished, and for which they are liable, if liable at all, only for unliquidated damages. We have repeatedly held that the accounting officers of the Treasury Department have no jurisdiction of such claims. The claimant might have brought his action in this court for the recovery of such damages within six years after they accrued, but as he did not do so, and his right now to bring such action is gone, that part of his claim is forever barred, and we can have no jurisdiction of it except by act of Congress, or, perhaps, by reference by either House of Congress under Revised Statutes, section 1059.

Technically, all claims for money due on contracts where the exact amount payable is not thereby fixed, as in the case of goods purchased or work done without an agreed price, are claims for unliquidated damages. But they arise necessarily and of course from otherwise fulfilled and executed agreements, and their settlement rarely requires anything more than the ordinary processes of accounting, the prices being readily determined by the vouchers and reports of the public officers incurring the expenses, or by other means within reach of the accounting officers, who very properly take jurisdiction and pass upon such claims. McClure's Case, 19 C. Cls. R., 179.

When serious controversies arise in such cases, they may be transmitted to this court for adjudication under either the Revised Statutes, section 1063, or the Bowman act (March 3, 1883, ch. 116, 22 Stat. L., 485).

But claims for unliquidated damages founded on neglect or breach of obligations contrary to the terms of a contract and not necessarily arising therefrom are of quite a different class. They must be sustained by extraneous proof, often involving a broad field of investigation and requiring the application of judgment and discretion upon the measure of damages and the weight of conflicting evidence. As was said in Power's case (18 C. Cls. R., 275), "The results to be reached in such cases can in no sense be called an account, and are not committed by law to the control and decision of Treasury accounting officers."

The court has jurisdiction of those claims set out in the petition which might have been adjusted in the Treasury Department, and that is sufficient to require us to proceed with the case.

The defendant's motion is overruled.

The Difficulties of Will-Making.

The difficulties of will-making press especially upon the intending testator at this period of the year, inasmuch as, if he follows the usual practice, he has only just concluded the work of taking stock of his property. Of course it is essential to the making of the majority of wills that the intending testator should know what he has to dispose of. Napoleon the Great disposed of magnificent sums by will, after having already disposed of them otherwise by gift, to the great disgust of his legatees; but, of course, all methodical testators will take care to avoid such dispositions as those. Yet it not unfrequently happens that, from an unexpected depreciation of property, a residuary legatee, who was intended to take more than the specific legatees, actually takes less, or, perhaps, even nothing. It has also happened, though of course not so frequently, that a residuary legatee, from the anxiety of the testator to provide adequately for him, has come in for too much, as was the case with Dr. Johnson's black servant, Frank, who derived not only an annuity of £70 a year, but a handsome lump sum to boot, from a will and codicil in which even Boswell's name was unmentioned.

There are three ways of avoiding such catastrophes. First, a careful valuation may be made of the disposable property, and the sums arrived at may be checked with the legacies, which may be decreased accordingly. Secondly, there may be a trust for sale, with instructions for equal division of proceeds. Thirdly, the specific legacy to the residuary legatee may be of sufficient amount to make the amount of the residuary estate of little consequence to the residuary legatee. Of these modes, the third seems to be the best

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and simplest. Frequent alterations are tiresome, and trusts for sale can only have uncertain results. Besides, in the case of real property, to which the trust for sale is most frequently applied, a person would much rather be a devisee of a particular piece of land which would come under his immediate control, than the recipient of part of a sum of money which could not be realized until after an indefinite time.

Another pitfall of the testator lies in the multiplication of codicils. We learn from Mr. Croker's recently published diary that the Lord Hertford, who had always intended to leave him a large legacy, but from "some informality" left him only £23,000, instead of an intended £80,000, made it one of his favorite pastimes to add codicil to codicil of his own composition, and the complication which resulted was, no doubt, the cause of Mr. Croker's disappointment. The testator, therefore, whose codicils are accumulating too much for intelligibility, will do well to turn the whole mass of his testamentary dispositions into a consolidating will without delay, and if he has any special tenderness for his residuary legatee, he will also do well to add up the legacies which have been given at the expense of his residuary estate. On the other hand, where small legacies have been given free of duty by a will or codicil anterior to 1881, it should be borne in mind that the Customs and Inland Revenue Act of that year imposes duty upon legacies of however small an amount, and the old-fashioned bequests of nineteen guineas should be increased accordingly.

In carrying out necessary alterations, or in making a new will, is it always necessary to obtain professional assistance? Those who have a true regard for lawyers cannot do better than dispense with it, for it is proverbial that wills of men's own are the most fertile in litigation. However, in the mere shaping of the document, so long as no life interests are to be created, testators frequently get on safely without aid. "Tying-up" is, we believe, quite beyond the reach of the most clear-headed of laymen, for it cannot be done without the use of technical phraseology, which is either unknown to a layman, or, if known, will inevitably mislead him. But the great advantage of having professional assistance is that the testator had at his elbow a person who has frequently advised persons in a similar position to himself, and can therefore suggest alternative modes of carrying out his intentions. How far barristers and solicitors ought to tender advice without being asked, must depend on circumstances; but there is no doubt that they have many and great opportunities of counselling moderation and forgiveness, and making suggestions consonant to reason and justice. In this connection it is interesting to note that the barrister's right to prepare a will without the intervention of a solicitor has never been questioned. —*Pump Court.*

Presumption.—An injury was suffered by reason of a car door falling upon a person. *Held*, Mere proof of the accident and its circumstances does not raise a presumption of negligence, but the plaintiff must show that the defect causing the accident was known to defendant, or had existed for such a length of time that knowledge would be presumed. [Case v. C. R. I. & P. R. Co.; Sup. Court of Iowa.]

The Courts.

U. S. Supreme Court Proceedings.

MARCH 16, 1885.

No. 1090. The United States, appellant, v. Charles L. Steever; appeal from the Court of Claims; judgment affirmed. Opinion by Mr. Justice Gray.

No. 40. The Cooper Manufacturing Company of Mt. Vernon, O., v. James W. Ferguson et al.; judgment reversed with costs and cause remanded for further proceedings to be had therein in conformity with the opinion of this court. Opinion by Mr. Justice Woods.

No. 886. Lida C. Hardin, administratrix, etc., et al., v. Bland P. Boyd, administrator, etc., et al.; decree affirmed with costs. Opinion by Mr. Justice Harlan.

No. 525. The United States, intervenor, v. The Indianapolis & St. Louis Railroad Company; decree affirmed. Opinion by Mr. Justice Harlan.

No. 1181. Soon Hing v. P. Crowley, Chief of Police of San Francisco; judgment affirmed with costs. Opinion by Mr. Justice Field.

No. 98. Dorsey E. W. Carter v. Martha Jane Burr, administratrix, etc.; appeal from the Supreme Court of the District of Columbia; decree affirmed with costs. Opinion by Mr. Chief Justice Waite.

No. 945. E. Mary Gregory et al. v. Joseph W. Hartley et al.; judgment affirmed with costs. Opinion by Mr. Chief Justice Waite.

No. 1024. The Fourth National Bank of St. Louis v. A. L. Stout et al.; dismissed for the want of jurisdiction. Opinion by Mr. Chief Justice Waite.

No. 1119. The Memphis & Little Rock Railroad Company, etc., v. George T. Bonner et al., etc.; dismissed for the want of jurisdiction. Opinion by Mr. Chief Justice Waite.

No. 828. Joseph Davis, collector, etc., v. The United States, ex rel. Austin Corbin et al.; and No 1266, Abner Gaines, collector, etc., v. The United States ex rel Austin Corbin et al.; motions to dismiss or affirm denied. Opinion by Mr. Chief Justice Waite.

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No. 1184. R. K. Dow et al., trustees, v. The Memphis & Little Rock Railroad Company; motion to dismiss or affirm denied. Announced by Mr. Chief Justice Waite.

No. 1045. The Tombstone Mill and Mining Company v. The Way Up Mining Company et al.; motion to dismiss or affirm denied. Announced by Mr. Chief Justice Waite.

No. 622 Merchants' Mutual Insurance Company v. George D. Allen, and No. 623, Merchants' Mutual Insurance Company v. Silas Weeks; motions to dismiss or affirm denied. Announced by Mr. Chief Justice Waite.

Go. 626. Gottfried Bachmann v. The Chesapeake & Ohio Railroad Company; motion to advance for hearing with No. 329 granted. Announced by Mr. Chief Justice Waite.

No. 818. The Cincinnati, New Orleans & Texas Pacific Railroad Company v. The Commonwealth of Kentucky;

No. 819. The Louisville & Nashville Railroad Company v. The Commonwealth of Kentucky;

No. 820. The Chesapeake, Ohio & Southwestern Rail oad Company v. The Commonwealth of Kentucky; motions to advance granted and causes set down for argument on second day of next term, immediately after the cases already assigned for that day.

No. 736. Theo. J. McGowan et al. v. The American Pressed Tan Bark Company; motion for further security on the supersedeas bond granted.

No. 2. Original Ex parte. In the matter of the Canada Southern Railroad Company, petitioner, dismissed on motion of Mr. D. H. McMillan, of counsel for petitioner.

Nos. 282 and 284. The City of New Orleans v. Judah Hart; in error to the Circuit Court of the United States for the Eastern district of Louisiana; dismissed. Clerk's costs in this court to be paid by defendant in error.

No. 383. Benj. F. Lockett v. Sabina Laning; dismissed with costs.

No. 212. Frank Deakin for use of Charles E. Pope. v. Chas. W. Lea et al.

No. 1282. Frank Deakin v. Chas. W. Lea and James D. Pernus; dismissed with costs.

No. 205. John Corse et al., appellants. v. Patrick Brennan et al; appeal from the Circuit Court of the United States for the western district of Pennsylvania; dismissed with costs pursuant to he tenth rule.

Thomas B. Gresham, Macon, Ga., and Thomas C. Early, Denver, Col., were admitted to practice.

William Lindsay, Frankfort, Ky.; James P. Harbeson, Flemingsburg, Ky.; Richard L. Maury, Richmond, Va.; E. O. Sykes, Aberdeen, Miss.; John M. Allen, Tupelo, Miss.; Charles F. Hanlon, San Francisco, Cal; W. G. Peckham, New York city; J. G. Parkhurst, Coldwater, Mich., and C. D. O'Brien, St. Paul, Minn., have been admitted to practice.

SUPREME COURT OF THE DISTRICT OF COLUMBIA GENERAL TERM.

MARCH 16, 1885.

Smith v. Smith; affirmed.

Waggeman v. Bartlett; on trial.

Application of Thomas H. Fitzman for admission to the bar referred to committee.

MARCH 17, 1885.

Justh v. Holloway; order for reargument rescinded.

MARCH 18, 1885.

Potomac Steamboat Company v. Reid; on argument.

S. A. Peugh v. H. S. Davis; mandate of United States Supreme Court affirming decree of District of Columbia Supreme Court.

MARCH 19, 1885.

Potomac Steamboat Company v. Reed; arguments concluded and cause submitted.

Lewis v. Lewis; on trial.

IN EQUITY.—New Suits.

March 8, 1885.

9356 John Lang v. Margaret Lang et al. Com sol, W. D Glassie.

March 9, 1885.

9357 Patrick W. Hagerty et al. v. Bridget Hagerty et al. Acct. and Receiver. Com sol, I. Williamson

9358. Sarah H E Ryan v. Edmund T. Ryan For divorce. Com sol, A. L. Merriman.

March 10, 1885

9359. Willis Worster v Antoni Devote et al Judgment, creditor's bill Com sol, J. T Cull.

9 60. George Tru sdell v Thomas Martin et al. To sell Com sols, Edwards & Barnard

March 14, 1885.

9361. Isaiah Shoemaker et al. v. John E. Chappell et al For release and Injunction. Com sol, W. D. Cassin

9362. Louis Duval v Gertrude A. Duval For divorce. Com sol, J. Ambler Smith.

March 16, 1885.

9363. Eugene McSweeney v. Edward Healey. For acct. Com sols Dennis and Briggs.

March 17, 1885.

9364 John W. Kennedy et al v. Elisha Cole et al.

9365 John E Kendall v. James Monroe et al. Partition. Com sols, Edwards & Barnard.

March 18, 1885.

9366 Seymour W. Tullock v. Charles Gordon et al To substitute trustee. Com sol, M. G. Emery, jr

9367. David S Gittings et al v Silliman Blagden. Substitution of trustee Com sols, Merrick & Morris.

9368. Euphemia Stewart v. Henrietta O. Jefferson. To set aside deed. Com sols, Carrington & Williamson.

CIRCUIT COURT.—New Suits at Law.

March 9, 1885

26007 Wm. W Dudley, administrator, v Henry C. Johnson Notes, $4042 35 Piffs attys, Birney & Birney.

26008. White, Heniz & Co. v. George B Mankin Note, $209 25. Piffs atty, Thomas F. Miller.

March 11, 1885.

26009 James W. Gillis v Keyser and Paull. Acct., $308.09 Piffs atty, Mills Dean.

March 12, 1885.

26010 George Truesdell v. James H. Payne. Notds, $161 87 Piffs attys, Edwards & Barnards

26011 John O'Dea v. Elizabeth Frey. Acct., $66.83½. Piffs atty, Arnold & Langvogt.

March 13, 1885.

26012. Willie S. Hogan v. Moses B. Furr. Acct., $354. Piffs atty, O. G. Lee

26013 Stephen T. Brown v. Mary T. Dent. Note $328. Piffs atty, F. W Jones

26014. Same v. Emily A. Moxley. Notes, $1287.82. Piffs atty, Same

26015 W. M. Galt & Co. v David R. Jackson. Acct. $318 38. Piffs attys, Riddle, Davis & Padgett.

March 14, 1885.

26016 Allen C. Clarke v. Henry Brown Judg't of Justice Hall, $22 03.

March 15, 1885

26017 B F George & Co v. T. J. Clark & Co. Acct., $218.13. Piffs atty F. T. Browning

26018 Same v. Joseph Rodier et al. Notes, $1064 56 Piffs atty, same.

26019. Armour & Co v. Benjamin S. Counselman. Acct. $114. Piffs atty, O C. Lancaster.

26020. Beverly R Codwise v Guy H. Thompson. Note, $123 20 Piffs atty, L Tobriner.

March 16 1885.

26021. Clark & Given v. Edward Abner. Notes, $233.52 Piffs atty, E. H. Thomas.

March 17 1885.

26022 John W Sinclair v Welcker & Co Acct., $169 37. Piffs attys Edwards & Barnard.

26023. Hall & Garrison v John W. McKnight. Acct., $1866.96. Piffs atty, R. R. Perry.

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26024 Same v. John Fraser. Notes and acct, $1363.54 Pltf's atty, same.
26025 Wm H. Wright v. Clayton McMichael. Replevin Pltf's atty, J G Bigelow.
26026 Robert Johnson v The W & G. R R. Co. Damages, $10,000 Pltf's attys, Carrington and Williamson.
26027 Sara C Bigger v. John W Butterfield. Acct., $916 89. Pltf's atty, H B Davidson
26028 Theophilus Fisk Mills v. Nathan Sprague. Note $38 50 Pltf's atty, D O'C. Callaghan.
26029 John Fisher v. Valentine Walker et al. Note, $350. Pltf's atty, L Tobriner.
26030 Morrisell & Smith v. N. White & Co. Acct., $378 50. Pltf's atty, E. H. Thomas.

March 18, 1885.

26031. Sarah Courtney et al. v. Charles D. Drake et al. Issues from probate.
26032. David L. Gunkle v. John C. Heald, Adm'r. Notes, $1,00 Pltf's atty, R D. Mussey.
26033. David Waiff v Julius H. Albers et al. Notes, $180. Pltf's atty, L Tobriner.
26034 Barker & Waggner v Louis R. Bart. Bills of Ex., $457 62 Pltf's attys, Abert & Warner.
26035 Joseph H Hilton v Elizabeth A. Brown. Notes, $175 Pltf's attys, Riddle, Davis & Padgett.
26036. Timothy D Daly v. Fall & Love. Acct, $206 14 Pltf's atty, C C. Lancaster.
26037. Wm. Miller v. Leon Schell. Notes and acct., $633 32 Pltf's atty, same.
26038 Willie S Hoge v. John Dungan. Note, $108.40. Pltf's atty, O. G Lee.
26039. Joseph W. Cotter v. George D. Deshields. Acct., $264 39. Pltf's atty, C. C. Lancaster.

March 19, 1885.

26040 Philip A Darnielle v. George J. Bond. Certiorari. Defts atty, Chas. Pelham.

PROBATE COURT.—Justice Hagner.

March 20, 1885.

Estates of James A Beattie, Benjamin C. Berry, Lafayette Jacobs, Henry Nash James B. O'Brien, Benjamin Ross, Lawrence Rossiter, and Samuel Schaffer. Order of publication

Estate of H N. Barlow. Order directing pictures to be delivered to General Swaim.

Estate of Mary Elizabeth Davidson. Assent of heirs to probate of will filed with petition of M. M. Parker for letters testamentary.

Estate of Thomas Weaver. Order directing investment.

In re Caroline C. Fields. Order appointing Lois Fields, and bond fixed at $600

In re will of W. H. Winson. Petition of S. E. Faunce for letters filed.

Estate of Mary Louise Fry. Will admitted to probate and record.

Estate of C. L Hulse. Order authorizing payment for ward's schooling

Estate of Isadore C. Cansten. Letters of administration granted to Walter Ker, bond, $1000

Estate of John M Miller Will admitted to probate and letters granted G A. Walker, bond, $200

Estate of Delos B Sackett Order appointing Florence Ann Sackett guardian of minor children in bond of $3,000, and letters of administration granted to her and bond fixed at $6,000

Estate of James D. Cleary Letters of administration issued to W E. Edmonston in bond of $30,000

Estate of Ann C Waters Letters of administration granted Galena Jewitt and bond fixed at $500.

Estate of Zebbens Stockbridge. Letters of administration issued to C. G. Lee, and bond fixed at $800

Estate of Thomas H Collins Will admitted to probate and letters issued to Francis B. Collins, and bond fixed at $[illegible]

Estate of B. W Reed. Order of publication.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 17th day of March, 1885.

SARAH HELEN E. RYAN v. EDMUND T. RYAN. } No. 9358.

On motion of the plaintiff, by Mr Merriman, her solicitor, it is ordered that the defendant, Edmund T Ryan, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
True copy. Test: 12 R. J. MEIGS, Clerk.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of administration c. t a. on the personal estate of David C Ralston late of the U. S. Army, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 16th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of March, 1885.

ANDREW A. LIPSCOMB,
12 Administrator c. t. a.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 21st day of March, 1885.

WHITE, HENTZ & CO. v. GEORGE B. MANKIN, trading as MANKIN & CO } No. 26008.

On motion of the plaintiffs, by Mr Thomas F. Miller, their attorney, it is ordered that the defendant, Geo B Mankin, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 10 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 20th, 1885.

In the matter of the estate of George Gregory, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration c t a. on the Estate of the said deceased has this day been made by Andrew N Medbery, praying that letters issue to George R. Gray.

All persons interested are hereby notified to appear in this court on Friday, the 10th day of April, next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration c t a on the estate of the said deceased should not issue to said George R. Gray as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

By the Court. A. B HAGNER, Justice.
Test: H. J. RAMSDELL, Register of Wills.
O. T. THOMPSON, Solicitor. 12

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business. March 20th, 1885.

In the matter of the Estate of Laura O. Taylor, late of the District of Columbia, deceased

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Georgeanna C Bird.

All persons interested are hereby notified to appear in this Court on Friday, the 10th day of April next, at 11 o'clock, a. m., to show cause why the said will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B HAGNER, Justice.
Test: H J RAMSDELL, Register of Wills.
O T. THOMPSON, Solicitor. 12

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business. March 20, 1885

In the case of Allan Rutherford, administrator of Bernard G Semig, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 10th day of April A. D 1885, at 11 o'clock, a m for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) of a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test; 12 H. J. RAMSDELL, Register of Wills.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business March 20, 1885

In the matter of the Estate of Samuel S Shaffer, late of the Police Force of the District of Columbia deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Charles E. Creecy.

All persons interested are hereby notified to appear in this court on Friday, the 10th day of April next at 11 o'clock. a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 12 H. J. RAMSDELL, Register of Wills.
V. B. EDWARDS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Holding a Special Term for Orphans Court Business. March 20th, 1885.

In the matter of the Estate of Laurense Rossiter, late of the Police Force of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Charles E. Creecy

All persons interested are hereby notified to appear in this court on Friday, the 10th day of April next at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B. HAGNER, Justice.
Test 12 H. J. RAMSDELL, Register of Wills.
V. B EDWARDS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 20, 1885

In the matter of the Estate of Benjamin Ross, late of the Police Force of the District of Columbia, deceased

Application for Letter of Administration on the estate of the said deceased has this day been made by Charles E. Creecy.

All persons interested are hereby notified to appear in this court on Friday the 10th day of April next at 11 o'clock, a m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B. HAGNER, Justice.
Test: 12 H J. RAMSDELL, Register of Wills.
V B EDWARDS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 20th, 1885.

In the matter of the Estate of James B O'Brien, late of the Police Force of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Charles E Creecy.

All persons interested are hereby notified to appear in this court on Friday, the tenth day of April, next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

By the Court. A. B. HAGNER, Justice.
Test: 12 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business March 20th, 1885.

In the matter of the Estate of Henry Nash, late of the Police Force of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Charles E. Creecy

All persons interested are hereby notified to appear in this Court on Friday, the 10th day of April next at 11 o'clock, a m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B HAGNER, Justice.
Test: H. J RAMSDELL, Register of Wills.
V. B. EDWARDS, Solicitor. 12

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, March 20th, 1885.

In the matter of the Estate of Lafayette Jacobs, late of the Police Force of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Charles E. Creecy.

All persons interested are hereby notified to appear in this court on Friday, the 10th day of April next at 11 o'clock, a m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 12 H. J. RAMSDELL Register of Wills.
V. B. EDWARDS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 20th, 1885.

In the matter of the Estate of Benjamin C. Berry, late of the Police Force of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Charles E Creecy.

All persons interested are hereby notified to appear in this court on Friday, the 10th day of April next at 11 o'clock, a. m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. ALEXANDER B. HAGNER, Justice.
Test 12 H. J. RAMSDELL, Register of Wills.
V. B. EDWARDS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 20, 1885.

In the matter of the Estate of James A. Beattie, late of the Police Force of the District of Columbia deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Charles E. Creecy.

All persons interested are hereby notified to appear in this court on Friday the 10th day of April next at 11 o'clock, a. m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 12 H J RAMSDELL, Register of Wills.
V. B. EDWARDS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 13, 1885

In the matter of the Estate of W Wallace Grant, late of the Police Force of the District of Columbia, deceased.

Application for Letters of Administration on the estate of said deceased, has this day been made by Charles E. Creecy.

All persons interested are hereby notified to appear in this court on Friday, the 3d day of April next at 11 o'clock, a m to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B HAGNER, Justice.
Test 11 H J RAMSDELL, Register of Wills.
V. B EDWARDS, Solicitor

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business March 13, 1885.

In the matter of the Estate of Samuel W Koontz late of the Police Force of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Charles E. Creecy

All persons interested are hereby notified to appear in this court on Friday the 3d day of April next at 11 o'clock, a m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test; 11 H. J. RAMSDELL. Register of Wills.
V. B. EDWARDS, Solicitor.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 13, 1885

In the matter of the Estate of Samuel T. Crown, late of Washington, D C, deceased.

Application for Letters of Administration on the Estate of the said deceased, has this day been made by William S. Crown

All persons interested are hereby notified to appear in this Court on Friday, the 3d day of April next, at 11 o'clock a. m., to show cause why the said Letters of Administration, on the estate of the said deceased should not issue as prayed Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B HAGNER. Justice.
Test: H. J. RAMSDELL, Register of Wills.
GORDON & GORDON, Solicitors. 11

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 11th, 1885

In the matter of the Estate of Gorge A. Gordon, late of Washington, D. C, deceased

Application for Letters of Administration of the Estate of the said deceased, has this day been made Elizabeth R. Gordon.

All persons interested are hereby notified to appear in this court on Friday, the 3d day of April, next, at 12 o'clock m., to show cause why Letters of Administration on the estate of said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 11 H. J. RAMSDELL, Register of Wills.
GORDON & GORDON, Solicitors.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 13th, 1885.

In the matter of the Estate of Dennis Austin McCarthy, late of the City of Washington, District of Columbia, dec'd.

Application for Letters of Administration on the Estate of the said deceased, has this day been made by Anne McCarthy of the said City and Distr ct.

All persons interested are hereby notified to appear in this court on Friday, the 3d day of April next at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

By the Court. A B. HAGNER. Justice.
Test 11 H. J. RAMSDELL, Register of Wills.
JOHN E. MCNALLY, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business March 13th, 1885.

In the matter of the Estate of George H Walker, late of the Police Force of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Mary O Walker.

All persons interested are hereby notified to appear in this court on Friday, the third day of April, next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

By the Court. A. B. HAGNER, Justice.
Test: 11 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business March 13th, 1885.

In the matter of the Estate of Alexander Tait, late of the Police Force of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Victoria H Hough.

All persons interested are hereby notified to appear in this Court on Friday the 3d day of April next at 11 o'clock, a m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B HAGNER, Justice.
Test H. J RAMSDELL, Register of Wills.
V. B. EDWARDS, Solicitor. 11

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 13th, 1885.

In the matter of the Estate of Jefferson Robinson, late of the Police Force of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Matilda Robinson.

All persons interested are hereby notified to appear in this court on Friday, the 3d day of April next at 11 o'clock, a. m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. ALEXANDER B. HAGNER, Justice.
Test 11 H. J. RAMSDELL, Register of Wills.
V. B. EDWARDS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 13th, 1885.

In the matter of the estate of John A. W. Clarvoe, late of the Police Force of the District of Columbia deceased

Application for Letters of Administration on the Estate the said deceased has this day been made by Martha R. Clarvoe.

All persons interested are hereby notified to appear in this court on Friday, the 3d day of April, next, at 11 o'clock a. m., to show cause why the said Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: H. J. RAMSDELL, Register of Wills.
V. B. EDWARDS, Solicitor. 11

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business. March 13th, 1885

In the matter of the Estate of David R. P. Bigley, late of the Police Force of the District of Columbia, deceased

Application for Letters of Administration on the estate of the said deceased has this day been made by Mary Alice Bigley.

All persons interested are hereby notified to appear in this Court on Friday, the 3d day of April next, at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B HAGNER, Justice.
Test: H J RAMSDELL, Register of Wills.
V B EDWARDS Solicitor. 11

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 13, 1885

In the matter of the Estate of John D Nutting, late of the Police Force of the District of Columbia, deceased.

Application for Letters of Administration on the estate of said deceased, has this day been made by Charles E. Creecy,

All persons interested are hereby notified to appear in this court on Friday, the 3d day of April next at 11 o'clock, a m. to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B HAGNER, Justice.
Test 11 H J. RAMSDELL, Register of Wills.
V. B. EDWARDS, Solicitor

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business March 13, 1885.

In the matter of the Estate of Moses Meredith late of the Police Force of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Charles E. Creecy

All persons interested are hereby notified to appear in this court on Friday the 3d day of April next at 11 o'clock, a m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test; 11 H. J. RAMSDELL, Register of Wills.
V. B. EDWARDS, Solicitor.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business March 7th, 1885.

In the matter of the Estate of Isaac H. Taylor, late of Boston, Mass deceased

Application for Letters of Administration on the estate of the said deceased, has this day been made by Sallie B Taylor, of Plymouth County, Mass

All persons interested are hereby notified to appear in this Court on Friday the 27th day of March next at 11 o'clock, a. m , to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B HAGNER, Justice.
Test: H. J RAMSDELL, Register of Wills.
O. D. BARRETT, Solicitor. 10

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 6th, 1885.

In the matter of the Estate of Wiley Lane, late of the City of Washington, District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Whitmell Lane, of North Carolina

All persons interested are hereby notified to appear in this court on Friday, the third day of April, next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

By the Court. A. B. HAGNER, Justice.
Test: 10 H. J. RAMSDELL, Register of Wills.
JAMES H. SMITH, Solicitor.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration on the personal estate of Eliza beth Wirt Goldsborough, late of the District of Columbia, deceased

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of March next; they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 13th day of March, 1885.

WM. WIRT, Administrator.
R. B. LEWIS, Solicitor 11

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 6th, 1885.

In the matter of the Estate of John W. Tucker, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Mollie Weaver, for appointment of Albert F. Fox as Administrator.

All persons interested are hereby notified to appear in this court on Friday, the 3d day of April next at 11 o'clock, a. m , to show cause why Letters of Administration to Al bert F. Fox on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court ALEXANDER B. HAGNER, Justice.
Test 10 H J RAMSDELL, Register of Wills.
H. B MOULTON, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 6th, 1885.

In the matter of the Estate of James H. Causten, late of the District of Columbia, deceased.

Application for Letters of Administration d. b n .c.t.a., on the Estate of the said deceased has this day been made by Josephine Young and Rebecca E. Young for the appointment of Thomas E Waggaman

All persons interested are hereby notified to appear in this court on Friday, the 3d day of April, next, at 11 o'clock a. m , to show cause why the said Letters on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: H. J. RAMSDELL, Register of Wills.
IRVING WILLIAMSON, Solicitor. 10

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business March 6th, 1885.

In the matter of the Estate of Nellie Jidt, late of the City of Washington District of Columbia, deceased

Application for Letters of Administration on the estate of the said deceased has this day been made by Henrietta C. Sinclair and Mary J Sinclair.

All persons interested are hereby notified to appear in this court on Friday, the 3d day of April next at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

By the Court. A B. HAGNER, Justice.
Test: 10 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 17th day of February, 1885.

HUGH DOWNEY ET UX
v.
MARGARET E. KING, JAMES I KING, HUGH TUOHY, BRIDGET TUOHY and PATRICK LEONARD. } No. 9334. Eq. Doc 24.

On motion of the plaintiffs, by Mr. N. Dumont, their solicitor, it is ordered that the defendants, Margaret E. King and Patrick Leonard, cause their appearance to be entered herein on or before the first rule day, occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy Test: 9-3 R J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 3d day of March, 1885.

GEORGE T. JACOBS
v.
JOHN W. POST and another. } No. 9336. Eq. Doc. 24.

On motion of the plaintiff, by Mr. Daniel O'C. Callaghan, his solicitor, it is ordered that the defendant, John W Post, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 10 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE

That the subscriber of District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamenary on the personal estate of John Voegler, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of March, 1885.

10 JOANNETTE VOEGLER,
LOUIS SCHADE, Solicitor. Adminsiratrix

THIS IS TO GIVE NOTICE.

That the subscriber, of Lynchburg, Virginia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Edward Henry Cumpston late of Alexandria, Virginia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of February, 1885.

MARY M. CUMPSTON, Ex'x.
J J. DARLINGTON, Solicitor 10

THIS IS TO GIVE NOTICE:

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Samuel P mphrey, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of March next: they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of March, 1885.

C. C. MEADOR,
J. J. DARLINGTON, Solicitor. 11 Administrator.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 13, 1885

In the matter of the Estate of Mary Ann Hagan, late of Washington City, deceased.

Application for Letters of Administration on the Estate of the said deceased, has this day been made by Michael J. Keane

All persons interested are hereby notified to appear in this Court on Friday, the 3d day of April next, at 11 o'clock a. m., to show cause why the said Letters of Administration, on the estate of the said deceased should not issue as prayed Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B HAGNER, Justice.
Test: H. J. RAMSDELL, Register of Wills.
HANNA & JOHNSTON, Solicitors. 11

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business March 11th, 1885

In the matter of the Estate of Hannah Adler, late of the District of Columbia, deceased

Application for Letters of Administration, on the Estate of the said deceased has this day been made by Henry Adler.

All persons interested are hereby notified to appear in this court on Friday, the 3d day of April, next, at 12 o'clock m., to show cause why Letters of Administration on the estate of said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 11 H. J. RAMSDELL, Register of Wills.
SIMON WOLF Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 10th day of March, 1885

CLARA J. HEYLAND ET AL. v. MARSHAL WALLACH ET AL } No 9294. Eq Doc. 24.

On motion of the plaintiffs, by Mr. Irving Williamson, their solicitor, it is ordered that the defendants, Marshal Wallach, Adelaide S. Carusi, and Genevieve Carusi, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
True copy Test: 11 R. J MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business March 13th, 1885.

In the matter of the Estate of John Beck, late of the City of Washington, deceased

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by Christian Ruppert and John L. Vogt

All persons interested are hereby notified to appear in this court on Friday the 3d day of April next at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER Justice.
Test: 11 H. J. RAMSDELL, Register of Wills.
HANNA & JOHNSTON, Solicitors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

HARRIET A. SAUNDERS ET AL. v. JAMES L. SAUNDERS ET AL. } In Equity. No. 6888.

Upon the consideration of the report of Albert McIntosh, trustee, in the above cause, it is this sixth day of March, 1885, ordered that the sale of the real estate therein mentioned to Robert Johnson be ratified and confirmed, unless cause to the contrary be shown on or before the seventh day of April, 1885 Provided, a copy of this order be published once a week for each of three successive weeks in the daily Evening Star, in the said District, before the 7th day of April, 1885.

A B HAGNER.
A true copy. Test: 11 R. J. MEIGS, Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 13, 1885.

In the matter of the Estate of Maria Christine Koch, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Werner Koch.

All persons interested are hereby notified to appear in this court on Friday, the 3d day of April next at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B HAGNER, Justice.
Test 11 H. J. RAMSDELL, Register of Wills.
LOUIS SCHADE, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business March 13, 1885.

In the matter of the Estate of Thomas B. Medary, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Kittie W. Medary.

All persons interested are hereby notified to appear in this court on Friday the 3d day of April next at 11 o'clock, a m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test; 11 H. J. RAMSDELL, Register of Wills.
EDWARDS & BARNARD, Solicitors.

THIS IS TO GIVE NOTICE,

That the subscriber, of Springfield, Vermont, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Reuben A. Bacon, late of the District of Columbia, dec'd

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of March, 1885.

ROBERT M. COLBURN,
11 Executor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Alfred Falconer, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of March, 1885.

11 ERASTUS M. CHAPIN, Executor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business. March 6th, 1885

In the matter of the Estate of Eliza Young, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of said deceased, has this day been made by Josephine Young and Rebecca E. Young

All persons interested are hereby notified to appear in this Court on Friday, the 3d day of April next, at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B HAGNER, Justice.
Test: H. J RAMSDELL, Register of Wills.
IRVING WILLIAMSON, Solicitor. 10

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Legal Notices.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary, on the personal estate of Daniel Brown, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of March next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 13th day of March, 1885.
his
11 THEODORE ✠ WILLIAMS, Executor.
mark
GORDON & GORDON, Solicitors.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 13, 1885.
In the matter of the Estate of Charles Miller.
Application for Letters of Administration on the estate of Charles Miller, late of the District of Columbia, has this day been made by Henry R. Miles.
All persons interested are hereby notified to appear in this court on Friday the 3d day of April next at 11 o'clock, a. m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. A. B. HAGNER, Justice.
Test: 11 H. J. RAMSDELL, Register of Wills.
A. C. RICHARDS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business March 13, 1885.
In the case of Randall Hagner and Samuel Maddox, Administrators c. t. a., of Ann Randall, deceased, the Administrators c. t. a. have, with the approval of the court, appointed Friday, the 10th day of April, A. D. 1885, at 11 o'clock a. m, for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrators c. t. a will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
Test: 11 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 13, 1885.
In the matter of the Estate of Augustus Wusterfeld, late of the Police Force of the District of Columbia, deceased
Application for Letter of Administration on the estate of the said deceased has this day been made by Charles E. Creecy
All persons interested are hereby notified to appear in this court on Friday the third day of April next at 11 o'clock, a m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. A. B. HAGNER, Justice.
Test: 11 H. J. RAMSDELL, Register of Wills.
V. B. EDWARDS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 13, 1885
In the matter of the Estate of Leon Sidi, late of Smyrna, Asia Minor, deceased.
Application for Letters of Administration on the Estate of the said deceased, has this day been made by John E. Risley, of New York, N Y
All persons interested are hereby notified to appear in this court on Friday the 3d day of April next at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. A. B. HAGNER, Justice.
Test 11 H. J. RAMSDELL, Register of Wills.
FOREST PAGE JONES, Solicitor.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business March 13, 1885
In the matter of the Estate of Peter A. Becker, late of the Police Force of the District of Columbia deceased.
Application for Letters of Administration on the estate of the said deceased has this day been made by Charles E. Creecy.
All persons interested are hereby notified to appear in this court on Friday, the 3d day of April next at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. A. B. HAGNER, Justice.
Test: 11 H. J. RAMSDELL, Register of Wills.
V B. EDWARDS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Holding a Special Term for Orphans Court Business. March 13th, 1885
In the matter of the Estate of Samuel Lester, late of the Police Force of the District of Columbia, deceased.
Application for Letters of Administration on the estate of the said deceased has this day been made by Charles E. Creecy
All persons interested are hereby notified to appear in this court on Friday, the 3d day of April next at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. A. B. HAGNER, Justice.
Test: 11 H. J. RAMSDELL, Register of Wills.
V B EDWARDS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, March 13th, 1885.
In the matter of the Estate of Benjamin F. Barker, late of the Police Force of the District of Columbia, deceased.
Application for Letters of Administration on the estate of the said deceased has this day been made by William F. Barker.
All persons interested are hereby notified to appear in this court on Friday, the 3d day of April next at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. A. B. HAGNER, Justice.
Test: 11 H. J. RAMSDELL Register of Wills
V. B. EDWARDS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 13, 1885.
In the matter of the Estate of Charles Ashton, late of the Police Force of the District of Columbia, deceased.
Application for Letters of Administration on the estate of the said deceased has this day been made by Jane Ashton.
All persons interested are hereby notified to appear in this court on Friday the 3d day of April next at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed, Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. A. B. HAGNER, Justice.
Test: 11 H J RAMSDELL, Register of Wills.
V. B. EDWARDS, Solicitor.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Peter D Posey, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 13th day of March next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 13th day of March, 1885.
SAMUEL C. BUSEY, Executor.
JAS. H. SAVILLE, Solicitor 11

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Washington Law Reporter

WASHINGTON - - - - - - March 28, 1885.

GEORGE B. CORKHILL - - - EDITOR

MR. JUSTICE MILLER has thus defined the Constitution, and perhaps a more learned or comprehensive definition does not exist: "The Constitution, in the American sense of the word, is a written instrument by which the fundamental powers of the government are established, limited and defined, and by which these powers are so distributed among the several departments, for their more safe and useful exercise for the benefit of the body politic."—LECT. CONST. LAW.

THE last edition of the *Ohio State Directory* contains the names of the attorneys at law in that State, distributed as follows: Cincinnati 700, Cleveland 349, Columbus 180, Dayton 78, Akron 49, Canton 43, Mansfield 47, Sandusky 31, Springfield 52, Steubenville 32, Tiffin 24, Toledo 79, Youngstown 58, Zanesville 48, Hamilton 42, Lima, 26, Warren 36, Portsmouth 25; total 3,687.

IN J. & G. N. Ry. Co. v. Terry, 4 Tex. L. R., 309, the Supreme Court of Texas discussed the question of the liability of railways for carrying a passenger past his station. The court says that in such cases, where sickness, injury or discomfort is the direct or proximate consequence of the wrongful act, the resulting pain and suffering are also elements of the injury for which compensation may be rightfully demanded, and that where a passenger has suffered great bodily exposure, these facts may be shown in aggravation of the damages sustained. The court lays down a rule for the proper estimation of damages in such cases. It says: "In the examination of the questions raised, much attention has been given to the case of Hobbs v. L. & S. N. R. R. Co., 10 Q. B., 111, and also to the case of the Indianapolis, etc., R. R. Co. v. Birnly, 71 Ill., 391. The well-considered case of Walsh v. C. M. & St. P. R. R. Co., 42 Wis., 23 as well as other kindred authorities bearing directly on the immediate question under consideration have also been examined. Much attention has, also, been given to the discussion of the rule in Harly v. Boxendale, 9 Exch., 341; S. C., 26 Eng. L. & E. R., 393; See 1 Sedgwick on Measure of Damages (17 ed.), 122, 213, 230, *et seq.*

"As before stated, after as full and as careful a consideration of the subject as we have been able to give it, we have come to the conclusion that the English rule laid down in the above cases, and others following them, is too narrow and contracted, and that a more liberal one estimating the damages in this class of cases should be applied. We believe that in cases of this character now under consideration, the just and proper rule is that the appellant, having unquestionably violated its contract of carriage with the appellee, should be held responsible in damages to him for the discomfort, inconvenience, sickness, expense, costs and charges which are shown by the evidence in this case to have been the direct, proximate, natural and probable result of the appellant's breach of duty. In this view of the subject we are sustained by the following cases: Brown v. Chicago, etc., R. R. Co., 54 Wis., 343; Klein v. Jewett, 26 N. J. Eq., 474; Matterson v. N. Y., etc., R. R. Co., 62 Barb., 364; Memphis, etc., R. R. Co. v. Whitfield, 44 Miss., 466; Spicer v. Chicago, etc., R. R. Co., 29 Wis., 580; Heim v. McCaughan, 32 Miss., 17; Weed v. Panama R. R. Co., 17 N. Y., 363. To these many other cases could be added to the same effect."

IN the case of Lessard v. Stram, S. C 22 N. W. Rep., 284, January 13, 1885, the Supreme Court of Wisconsin held that a party will not be liable for damages caused to adjoining lands by reason of the erection of an embankment to protect his own land from overflow from mere surface water, caused by rain or melted snow, flowing through a ravine, which, at certain times, contains running water, but which at other times is entirely destitute of water, as such a ravine is not a water course within the definition thereof in Hoyt v. Hudson, 27 Wis., 656.

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United States Supreme Court.

No. 1855.—October Term, 1884.

Alfred Richards, Appellant,
vs.
Brooke Mackall, Jr.

Appeal from the Supreme Court of the District of Columbia.

On motion, 1, to dismiss the appeal, or, if that is denied, 2, to vacate the supersedeas.

Mr. Chief Justice Waite delivered the opinion of the court.

The Supreme Court of the District of Columbia consists of one chief justice and five associate justices. Rev. Stat. Dist. Col., sec. 750; 20 Stat. 320, ch. 99, sec. 1. The law provides for both special and general terms of the court, and for an appeal from the special to the general term but the judgments and decrees when rendered are, whether they be at general or special term, the judgments and decrees of the Supreme Court. Rev. Stat. Dist. Col., secs. 753, 772. A general term is held by three justices, two, however, constituting a quorum, and a special term by one. Rev. Stat. Dist. Col., secs. 754, 757; 20 Stat. 320, ch. 99, sec. 2.

By sec. 705 of the Revised Statutes of the United States, as amended February 25, 1879, (20 Stat. 320, ch. 99, sec. 4), the final judgments and decrees of the Supreme Court of the District of Columbia, in cases where the value of the matter in dispute exceeds twenty-five hundred dollars, may be brought to this court for review "upon writ of error or appeal, in the same manner and under the same regulations as are provided by law in cases of writs of error on judgments, or appeals from decrees rendered in a circuit court."

This is an appeal from a decree of the Supreme Court of the District at a general term held by Chief Justice Cartter and Associate Justices Hagner and Cox, which began on the first Monday in April, 1884, and ended July 5, 1884. The transcript contains the following:

"[Filed July 8, 1884.]

"Supreme Court of the District of Columbia.

"Brooke Mackall, Jr., *vs.* Alfred Richards et al. } 8,118 Eq.

"And now comes the said defendant, Alfred Richards, and appeals to the Supreme Court of the United States from the decree of the general term passed July 5, 1884, in the above cause against him.

"Wm. B. Webb,
"*for defendant Richards.*

"The above appeal is allowed this 8th day of July, 1884.

"By the court:
"Mac Arthur, *Justice.*"

Then follows a citation in proper form signed by the Chief Justice of the court, bearing the same date as the order allowing the appeal. This citation was served October 7, 1884. Next in the transcript is the following:

"In the Supreme Court of the District of Columbia, the 10th day of July, 1884.

"Brooke Mackall, Jr., *vs.* Alfred Richards et al. } No. 8,118 Eq. In error."

Then follows a supersedeas bond in due form and at the foot these words:

"Approved July 11, 1884.
"Mac Arthur, *Justice.*"

The appeal was docketed in this court on the 15th of October, 1884.

The grounds of the motion may be stated thus:

1. The citation was not signed by the justice who approved the bond;

2. The citation was not served in time; and,

3. Mrs. Richards and Leonard Mackall, who were defendants below, have not joined in the appeal.

Secs. 999, 1012 and 705 of the Revised Statutes, taken together, provide in effect that, when there is an appeal from the Supreme Court of the District of Columbia to this court, the citation may be signed by any justice of that court. Such an appeal is to be taken under the same regulations as appeals from the circuit court. Sec. 705. On appeals from the circuit court a judge of that court may sign the citation. Sec. 999. Clearly, therefore, when the appeal is from the Supreme Court of the District, a justice of that court may do the same thing.

The transcript in this case shows that the appeal was allowed by the court, undoubtedly sitting in special term. This, we think, may be done. An appeal in a proper case is a matter of right. The decree appealed from was the decree of the Supreme Court, and the court, while sitting in special term, was still the Supreme Court, and as such capable of allowing an appeal to this court from one of its final decrees, though rendered at general term. As the general term had closed, it was quite proper to apply to the court sitting in special term for the allowance of the appeal. The allowance by the court, while in session at special term, would not do away with the necessity of a citation, because the

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allowance would not have been made at the same term in which the decree was rendered. Yeaton v. Lenox, 7 Pet., 221; Railroad v. Blair, 100 U. S., 662. As the allowance was made by the court, it was quite regular for the Chief Justice to sign the citation.

The transcript also shows that the bond was approved by the court. It seems to have been presented to the court on the 10th of July and approved the next day. What was done was, according to the transcript, "In the Supreme Court of the District of Columbia."

Even if the citation was not served in time, which we do not decide, the failure to serve will not work a dismissal of the appeal. Dayton v. Lash, 94 U. S., 112.

The last ground of the motion to dismiss was not relied upon in argument. The effect of what has been done was to allow a separate appeal by Alfred Richards.

The motions are overruled.

United States Court of Claims

BRANNEN, GASKINS AND BUMBAUGH

vs.

THE UNITED STATES.

1. The rules of evidence in the Court of Claims are those of the common law. They are not relaxed by the language of the Bowman act requiring "the vouchers, papers, proofs and documents" to be sent to the court with the transmission of every case. Evidence incompetent by the common law is not made competent by being so transmitted to this court, not by being returned from a department in answer to a call under Revised Statutes § 1076.
2. Reports and returns of public officers made in the line of their duty at the time of the transactions, and relating to matters within their own knowledge, are competent evidence as part of the *res gestæ*.
3. But reports of officers made long after the transactions took place, from investigations made by them and not to facts of their own knowledge or made after they go out of office, are incompetent evidence.
4. No executive officers have authority to adjust or settle claims for unliquidated damages for breach of contracts, other than for money due for work performed or materials furnished.
5. Boards appointed by executive officers to investigate and report upon such damages are extrajudicial, and these conclusions are not awards. Depositions taken by them are *coram non judice*.

ON MOTIONS.

RICHARDSON, C. J., delivered the opinion of the court.

In each of these cases a motion is made to present for determination the question of admissibility of certain evidence offered on the part of the claimant.

One of these cases comes before the court upon the voluntary petition of the claimant, under Revised Statutes, section 1059; the other two by transmission from committees of Congress under the Bowman act. March 3, 1883, chap. 116, 22 Stat L., 485.

Claimants frequently cite the language of section 1063 of the Revised Statutes, and of sections 1 and 2 of the Bowman act, identical in all three, requiring the head of a department or a committee of Congress sending a case to this court to transmit with it "all the vouchers, papers, proofs and documents pertaining thereto," as though it relaxed the rules of evidence and rendered admissible all the papers and documents, filed in a case before the department or the committees, for the purpose of establishing the facts recited therein.

It has uniformly been held that the rules of evidence apply to the trial of cases in this court precisely as they do in other courts of the United States, except that in cases under its general jurisdiction parties and persons interested in the support of a claim are excluded as witnesses by express statute. Rev. Stat., section 1079. From that exception claimants and persons interested under the District claims act (1880, June 16, ch. 243, section 4, 1 Supplement to Rev. Stat., 563), and under the Bowman act (1883, ch. 116, section 6, 22 Stat. L., 485) are relieved by the terms of those acts.

In Moore's case (91 U. S. R., 270 and 11 C. Cls., 97) the Supreme Court say on the subject of the rules of evidence in the Court of Claims;

"The question is, by what law is the Court of Claims to be governed in this respect? May it adopt its own rules of evidence, or is it to be governed by some system of law? In our opinion it must be governed by law, and we know of no system of law by which it should be governed other than the common law, that is the system from which our judicial ideas and legal definitions are derived. The language of the Constitution and of many acts of Congress could not be understood without reference to the common law. The great majority of contracts and transactions which come before the Court of Claims for adjudication are permeated and are to be adjudged by the principles of the common law. Cases involving the principles of the civil law are the exceptions. We think that where Congress has not provided, and no special reason demands, a different rule, the rules of evidence as found in the common law ought to govern the action of the Court of Claims. If a more liberal rule is desirable

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it is for Congress to declare it by a proper enactment. See also Blewett's case, 10 C. Cls., 235, affirmed on appeal; 13 C. Cls., 556; Clark's case, 96 U. S. R., 37; the Chester Owner's case, 19 C. Cls., 681.

It is a matter of common knowledge in connection with the business of Congress and the Departments, that parties present their claims there with *ex parte* affidavits, letters, and documents not under oath, and other irrelevant and incompetent evidence. The Committee on Claims of the House of Representatives, in their report upon the Bowman bill, July 26, 1882, called attention to this fact as one of the great evils which required action by Congress, and it was with the view of correcting it that provision was made for the transmission of cases to this court where they could be tried upon relevant and competent evidence alone according to the established rules of law.

The requirement of the Bowman act that with every claim "the vouchers, papers, proofs, and documents appertaining thereto" (adopted from Revised Statutes, section 1063), should be transmitted to this court, was not made for the purpose of changing the rules of evidence followed in courts of law, and of perpetuating here the very evils which were deprecated in the investigation of claims by committees of Congress. The object evidently was to transfer from Congress everything brought there in relation to the claim without subjecting the committee to the duty of examining all the papers and passing upon the competency or relevancy of each one of them as legal evidence. That duty was known to be the proper province of the court, and could be better exercised when issues were joined between the parties, and arguments were heard on the one side and the other in the judicial tribunal to which the matters were committed.

Twenty years ago the court said in Clark v. The United States (1 C. Cls. R., 249), and in McKee's Case (1 C. Cls. R., 336), what is just as applicable to the present cases as it was to those then under consideration:

"We are all agreed that the mass of matter transmitted with the petition by Congress, and printed as a part of the record in the case is not thereby made evidence. On the contrary, we think that only such documents should be printed in such cases as are made by proper references in the petition, a part of the petition, or such documents as may be agreed upon by stipulation between the parties, or such as the claimant deems to be properly authenticated, and desires to put in evidence.

"A claimant may manufacture any amount of irrelevant testimony and present it to Congress, and Congress may transmit it as part of his case to this court, but Congress does not thereby make irrelevant matter relevant, or enact that incompetent evidence is competent, and there is neither necessity nor propriety in this court including in the printed record of the case testimony which we must immediately reject as inadmissible."

To the consideration of the motions now before us we have only to apply the ordinary rules of evidence.

In Brannen's Case the Assistant Attorney-General moves to strike out of the printed record and not to admit as evidence the proceedings of a board of officers of the army appointed to investigate the claims in controversy.

It appears by the petition that the claimant seeks to recover damages for breach on the part of the defendants of a written contract made with him by an assistant quartermaster of the army at Camp Grant, in Arizona Territory, in 1876. The demands are therein alleged to be founded upon the following items:

"1. Loss of time of the "hands" in the employ of claimant who were kept idle by said defaults of defendant; but whom claimant was, notwithstanding, compelled to pay for the time so by them lost.

"Loss of adobe walls destroyed by rain, owing to the failure of defendant to supply logs, &c., as stipulated, out of which to cut lumber for the protection of such walls.

"3. Loss of claimant's own time resulting from said breaches.

"4. Damages inflicted on claimant through the defendant's said breaches, rendering it impossible to keep claimant's contracts with subcontractors, to whom claimant was compelled to pay damages.

"5. Loss of profits, which resulted to claimant by reason of said breaches of contract by defendant, whereby claimant was compelled to give up said contract before its completion."

The same claims were made in 1877 to the officers in command at Camp Grant, and the Military Department of Arizona. The assistant adjutant-general there appointed a board of officers "for the purpose of making a thorough investigation and report respecting" the losses alleged to have been sustained by the claimant. The board met, took the testimony of the claimant and other witnesses in writing, and reported the same in full in the proceedings, together with their "opinion" that the sum of $300 was a fair estimate for Mr. Brannan's losses by damage done to

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foundations and adobe walls for want of lumber to cover them. As to all the other claims the board was of opinion that nothing should be allowed to him.

These proceedings were forwarded to the War Department, and the following indorsements appear upon them:

"QUARTERMASTER GENERAL'S OFFICE,
"WASHINGTON, *July* 6, 1877.

"Respectfully submitted to the honorable Secretary of War.

"There is no authority in any executive officer to allow claims for damages on contracts. * * *

"M. C. MEIGS,
"*Q'rm'r Gen., Bvt. Maj. Gen., U. S. A.*"

"The views of the Quartermaster General are approved.

"GEO. W. MCCRARY,
"*Secretary of War.*
"WAR DEPARTMENT, *July* 16, 1877."

General Meigs was unquestionably correct in his opinion, approved by the Secretary of War, that no authority exists in any executive officer to allow claims for such damages on contracts. This court has so held in many cases (Hart's Case, 15 C. Cls. R., 427; Power's Case, 18 C. Cls. R., 263, and cases there cited; Dunbar's Case, 19 C. Cls. R., 493; McClure's Case, 19 C. Cls. R., 28, 179). It has long been so understood by accounting officers of the Treasury (Digest of Decisions of the Second Comptroller, A. D. 1860, sections 458-464; also vol. 2, A. D. 1885, sections 253, 381, 382). Several attorneys-general have so advised. (4 Opin., 327, 627; 6 Opin., 516; 14 Opin., 24; all cited and commented on in McKee's Case, 12 C. Cls. R., 556.) See also Dennis' Case, *ante*—where is stated the distinction between this and another class of cases, of which, though technically for unliquidated damages, the accounting officers have jurisdiction.

The proceedings of the board come to the court in response to a call upon the War Department, made under Revised Statutes, section 1076, at the request of the claimant, in whose behalf it is now urged that they are admissible, either to establish an award of $300 in his favor, or to prove the facts by the testimony, there recorded, of witnesses alleged to be dead or beyond the jurisdiction of the court.

Such a board cannot be regarded as one of arbitration in any sense whatever. It was an *ex parte* appointment of army officers to make investigations and report to their superiors, and its conclusions are nothing more than expressions of opinion.

But if the proceedings were intended by the officers concerned as an arbitration, and had the form of one, they would be wholly without force or effect. It has not yet been finally determined how far executive officers, having authority to settle and adjust controverted demands against the Government, can bind the latter by any form of submission to arbitration. (Great Falls Man. Company Case, 16 C. Cls., 160; 112 U. S. R., 645.) But nothing can be clearer than that such officers have no authority to bind the United States by the arbitration of claims over which they themselves have no jurisdiction.

Nor can the testimony taken before that board be used in actions at law between the same parties to prove the facts sworn to by witnesses since deceased or beyond the jurisdiction of the court. The whole proceedings were extra-judicial, and the testimony was *coram non judice*, circumstances which are sufficient to exclude such use of the evidence thus taken. 1 Wharton on Evidence, sec. 177.

The motion of the Assistant Attorney General is allowed.

Bumbaugh's case was transmitted to the court by a committee of the House of Representatives. The claimant is the widow of Dr. George H. Bumbaugh, deceased, who was a captain in company K, of the Twenty-fifth Regiment Missouri Infantry Volunteers, and at the battle of Shiloh, being assigned to duty as acting assistant surgeon, it is alleged that he lost his horse and equipments April 6, 1862, without fault on his part, for which payment is now asked of the Government.

The claimant's attorney moves to admit as evidence the certificates of certain officers of the regiment made to their superiors at or about the time of the loss. The counsel for the United States concede, without argument, that they come within the rule laid down in Gordon's Case (6 C. Cls., 294), and upon such concession they are admissible. In that case the court said:

"The official contemporaneous reports and communications of public officers made in the line of their duty before the controversy between the parties began, this court has always admitted in evidence for what they are worth. * * * Such reports, when admitted, are open to explanation and contradiction, and are received with caution and taken only for what they are worth."

The claimant's motion is allowed, and the evidence will be admitted, subject to the usual rules in such cases.

Gaskins' case was transmitted to the court by the Committee on War Claims of the House of Representatives. The claimant alleges

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that in 1864 he was drafted into the military service of the United States in Kentucky; that in order to obtain relief therefrom, he was compelled to pay to the United States, through a provost marshal, the sum of $300, and that he was not liable to draft.

The assistant adjutant general moves the court to strike from the record and reject as evidence of the facts therein recited two reports upon the subject-matter of the claim made, one by a brevet colonel of the army, May 1, 1869, and the other by an assistant adjutant general, June 24, 1879.

While the reports of public officers to their superiors in the regular and ordinary course of their duties upon matters coming within their own observation or knowledge, made at or near the time of the occurrences, are admitted in evidence as part of the *res gestæ*, and are accorded such weight as the court deem them entitled to under all the circumstances, the reports of persons after they go out of office or while in office long after the events took place, or upon facts not within their own observation or knowledge, but reciting the results of their examinations and research, are never received as evidence of the facts which they purport to set out.

The reports offered in this case clearly come within the latter class, and must be rejected. The defendant's motion is allowed.

Supreme Court Pennsylvania.

PIER ET AL. *vs.* SIEGEL ET UX.

1. It is a rule too firmly established to be shaken that a married woman cannot buy either real or personal estate upon credit, unless she is the owner of a separate estate, in which case she contracts upon the credit of such estate.
2. If a married woman who has no separate estate gives a bond and mortgage of herself and her husband to a vendor for the purchase money, it is too plain for argument, under the authorities, that the equitable title would be in her husband and liable for his debts, and it makes no difference that she paid the vendor the purchase money by means of a loan obtained from a friend.
3. A married woman has no personal credit, and unless she has a separate estate upon the credit of which she could contract, a purchase under the above circumstances, is on the credit of her husband.

Error to the Court of Common Pleas No. 1 of Allegheny county.

Ejectment, by Rufus W. Pier and Henry T. Dannals, against Frank Siegel and Catharine Siegel, his wife, for lot in Twenty-eighth ward, Pittsburg.

On the trial before Collier, J., the following facts appeared: Frank Siegel, one of the defendants, prior to April, 1881, became insolvent and was indebted to plaintiff. He was a glass-blower and worked at his trade, but he also kept a saloon, the business of which was mainly entrusted to Catharine Siegel, his wife, although conducted in his name and in his house. After the husband's insolvency his house and saloon were sold by the sheriff; but before he gave up possession another house and lot (the property now in question) was conveyed, April 1, 1881, by a bank, to "Catherine Siegel, wife of Frank Siegel," for $3,500, and upon that date the defendants moved from the house sold by the sheriff to this one; a saloon was at once opened there in the name of the wife, which she attended in the same way as at the old place.

Catherine Siegel had no separate estate; was not a *feme sole* trader; had never petitioned court for her separate earnings; her husband had neither deserted her nor was he profligate; they were living together and so continued.

Siegel himself had nothing to do with the purchase of the land in dispute. He consented thereto and signed the papers as directed by the attorney, but the transaction was conducted by his wife.

$1,000 of the purchase money was paid down, balance secured by purchase money mortgage. This balance was paid some three months later, the purchase money mortgage satisfied, and another mortgage to secure a bond of Frank Siegel and wife for $3,500, was executed by them to Catherine Gerhart.

Catherine Gerhart was a friend of the family, and she loaned the entire purchase money, first $1,000, and afterwards $2,500 to the wife, taking as evidence of and security for the loan, the bond and mortgage of the husband and wife.

Plaintiffs, on an execution issued on their judgment obtained June 14, 1881, bought in the interest of Frank Siegel in the land in dispute and brought this action claiming that the land was the husband's, and that the conveyance to the wife was fraudulent in law, and was for the purpose of hindering and delaying his creditors.

The plaintiff's counsel presented the following point: "That under all the evidence in the case the verdict must be for the plaintiffs." *Refused.*

The court charged the jury, *inter alia*, as follows: "But I think this would be the law; that if this lady borrowed the money in good faith, although she borrowed it, it would be buying it from a third person without the husband having anything to do with it—no arrangement about it in any way—in that case I think she could hold the property."

Verdict for the defendants.

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The plaintiffs took this writ of error, assigning for error the refusal of the court to affirm their point, and the charge to the jury as given above.

PAXSON, J.—The question of the good faith of this transaction has been settled by the verdict of the jury. We have only to consider its legal aspect.

The facts are not disputed. Catherine Siegel, one of the defendants below, is a married woman; has never been a *feme sole* trader, and has not any separate estate. She bought the house and lot which is the subject of this controversy, took the deed in her own name, and paid for it wholly with money borrowed from a friend. Subsequently she joined with Frank Siegel, her husband, in giving a bond and mortgage upon the house for the borrowed money. The property was then levied on upon an execution issued upon a judgment recovered against her husband, and the right, title and interest of the latter sold by the sheriff to the plaintiffs below, who brought this action of ejectment to recover the possession. The question for our consideration is whether the title thus acquired by Mrs. Siegel is good against her husband's creditors.

As a general rule, where husband and wife are in the joint possession or occupancy of personal or real estate, the law presumes the property to belong to the husband, and this presumption continues until the wife shows that she has acquired it by means not derived from her husband, and the burden of proof is upon her to prove that she so acquired it. The decisions in this State upon this point are uniform: Gamber v. Gamber, 6 Harris, 363; Keeny v. Good, 9 Id., 349; Topley v. Topley, 7 Casey, 328; Auble v. Mason, 11 Id., 261; Hollowell v. Horter, Id., 375; Walker v. Reamy, 12 Id., 410; Winter v. Walter, 1 Wright, 155; Rhodes v. Gordon, 2 Id., 277; Robinson v. Wallace, 3 Id., 129; Aurand v. Shaffer, 7 Id., 363; Gault v. Saffin, 8 Id., 307; Baringer v. Stiver, 13 Id., 129; Hoffman v. Toner, Id., 231; Flick v. Davies, 14 Id., 266; Curry v. Bott, 3 P. F. Smith, 400; Seeds v. Kahler, 26 Id., 262; Sixbee v. Bowen, 10 Norris, 149. The disability of a married woman to contract is a rule of the common law so familiar that a reference to it seems almost unnecessary, and the act of 1848 and its supplements did not, and were not intended to change the law in this respect except to bind her separate estate in special cases and in the manner therein specified. This is settled by abundant authority. It is sufficient to refer to Caldwell v. Walters, 6 Harris, 79; Glyde v. Keister, 3 Wright, 299; Keiper v. Ailfricker, 6 Id., 325; Steinman v. Ewing, 7 Id., 63; Schlosser's Appeal, 8 P. F. Smith, 493; Quinn's Appeal, 5 Norris, 447. It is also a rule too firmly established in this State to be shaken, that a married woman cannot buy either real or personal estate upon credit, unless she is the owner of a separate estate, in which case she contracts upon the credit of such estate: Robinson v. Wallace, 3 Wright, 129; Wieman v. Anderson, 6 Id., 311; Baringer v. Stiver, 13 Id., 129; Hoffman v. Toner, Id., 231; Rush v. Vought, 5 P. F. Smith, 437; Brown v. Pendleton, 10 Id., 421; Seeds v. Kahler, 26 Id., 262. It was said in Bucher v. Ream, 18 P. F. Smith, at page 426: "If she (a married woman) purchases property with borrowed money or on credit, it belongs to her husband as it respects his creditors, and is liable for his debts." The same doctrine was reasserted in the recent case of Lochman et ux. v. Brobst, 31 *Pittsburg Legal Journal*, 160, and many of the authorities are there referred to.

It remains to apply these well settled principles to the case in hand. If Mrs. Siegel had given the bond and mortgage of herself and her husband to the vendor for the purchase money, it is too plain for argument, under the authorities, that the equitable title would have been in her husband, and liable for his debts. Does it make any difference that she paid the vendor the purchase money by means of a loan obtained from a friend? We think not. It was still a credit. Upon whose credit? Not upon her credit, certainly, for she had no personal credit; the law permits her none, and she had no separate estate upon the credit of which she could contract. The purchase was upon the credit of her husband; he gave his bond for the whole of the money and upon a judgment recovered upon that bond his other property, if he has any, may be swept away and applied in payment for the real estate in controversy. In such case, what would be the remedy of the creditors if we allow the title of the wife to stand? It requires but a moment's reflection to see that were we to sanction the doctrine contended for by the defendants in error, we would open the door to the most serious frauds. It would enable married women whose husbands are embarrassed to buy upon credit, give the obligations of their husbands for the purchase money, and apply his property through the machinery of the law in payment.

We are of opinion that the plaintiffs' first point should have been affirmed, and a binding direction given to the jury to find for the plaintiffs.

Judgment reversed, and *venire facias de novo* awarded.

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The Study of the Classics.

A lawyer has frequent occasion to observe the value of the power of exact expression. It is a power wholly dependent, of course, on clear thinking; but singularly enough the acquisition of this precedent power of clear thinking is generally only to be had by a long process of exercise in clear expression. There may be, and doubtless are, fortunate individuals born with clear heads who never had to learn how to think with precision, but those who need to learn to do so generally have to learn by the use of words. Clear thinking, with most of the students with whom we have had to do, seems to be a gradually attained habit or accretion of habits built up by attention to the precise meaning of expressions in a multitude of cases.

This is the real value of classical studies to a lawyer: he cannot get through the mastery of Cæsar and Cicero, with dictionary and grammar, without acquiring in some degree at least an instinctive consciousness that makes him halt at foggy expressions and ambiguous constructions. We doubt not that the same result might be reached by a proper course in teaching English, but it is not done. We venture to say that minds that have had a classical education are characteristically clearer in thought and expression on this account than those which have had only an English training. The Latin is forgotten, but the habit of turning about a phrase and putting clauses in their right place is not.

To illustrate, let us advert to two recent cases turning on the place for a clause or a comma.

This very common cause of litigation gave rise to the recent case of Nixon v. Cameron (Eng. Court of App.; 32 Weekly Rep., 834). A will contained these words: "I hereby give and bequeath unto Hannah Cameron, my wife, the house in which she resides in Cornbrook Park, and all the furniture therein, together with the sum of £3 10s per week for her natural life." The question was whether the words "for her natural life" qualified the gift of house and furniture as well as the annuity. To preclude such ambiguity, the clause ought to have been inserted immediately after naming the wife, thus—I give to H. C., my wife, for her natural life, the house, &c. The trial court held the clause, as it stood, did not qualify the gift of the furniture. A later provision in the will showed that the testator supposed he had only given a life estate in the house. The appellate court reversed the decision of the trial court as to the furniture, and said the introductory words govern the whole sentence, and the concluding words, "for her natural life," in such a sentence so constructed, are appropriate to describe the interest intended to be taken in all, and not only in the last, antecedent of the subject governed by the verbs "give and bequeath."

In the case of James v. Young (32 W. R., 982) one question was as to the meaning of the words "are, and shall be liable to be, evicted therefrom." The court held that it should be read not as the punctuation indicated, but "are and shall be," not "evicted," but "liable to be evicted therefrom." The word "are" applies not to absolute eviction, but to the possibility of eviction.

These sorts of faults in draftsmen and all the kindred inconclusive thinking which give the profession the material and occasion for so much uncompensated labor, are a part of the slovenliness of the mind, which education ought to eradicate.

The teacher who shall originate a course in the English language which shall serve in this respect as an equivalent to a thorough course in the classics, will deserve the gratitude of mankind and will turn the scale of educated opinion in favor of Mr. Adams, as against his opponents.—*N. Y. Daily Register.*

Railroad Free Passes.

Commissioner of Emigration Charles F. Ulrich, who was one of the passengers on the train which was run into by another train at the Spuyten Duyvil disaster, on the 13th of January, 1882, sued the New York Central & Hudson River Railroad Company for damages for injuries sustained and for loss of baggage. The company interposed the defense that as Mr. Ulrich was travelling upon a free pass, by the terms of which he assumed the risk of accident, and agreed that the company "should not be liable under any circumstances for any injury to the person, or for any loss or injury to his property, while using this ticket," he could not recover. On the trial in the court of common pleas the court so held, and the complaint was dismissed. It appeared, however, that Mr. Ulrich had another ticket, which he had bought and paid for, entitling him to transportation in one of the drawing room cars.

The general term, on appeal, reversed the judgment and ordered a new trial, holding that although a person riding on a free pass containing such an agreement relinquishes his right to compensation for injuries, yet, as Mr. Ulrich was accepted as a passenger in a drawing-room car on a ticket for which he had paid, the free pass giving no right to travel in that car, the rights and relations of the parties were changed. "The plaintiff thereby had all

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the rights that the law gives to ordinary passengers, and having paid for a ticket, he is not to be considered as one who in consideration of a free passage has agreed not to hold the company liable for injuries. The company having made a new contract could not now ignore it. The defendant has taken money from the plaintiff for carrying him, and it has no right to say that he was a free passenger, and to ask the court to incorporate into the drawing-room ticket the provisions of the free pass." As to the defense that the drawing-room cars belong to the Wagner Car Company, the court hold that as no one without leave of the defendant can run cars upon its track, they must assume that the drawing-room cars are run for the benefit of the defendant.—*N. Y. Daily Reg.*

The Courts.

U. S. Supreme Court Proceedings.

MARCH 23, 1885.

Alexander Heynemann, San Francisco, Cal.; Edgar Frank Preston, San Francisco, Cal.; Thomas B. Bond, Modesto, Cal.; Stanley S. Stout, Milwaukee, Wis.; Charles McNamee, New York city; Eugene Semple, Vancouver, W. T., and Azel F. Hatch, Chicago, Ill.; Victor J. Loving, Boston, Mass; Waller R. Staples, Christiansburg, Va.; N. T. Crutchfield, Louisville, Ky.; A. C. Bradford San Francisco, Cal.; Josiah H. Drummond, jr., Portland, Me.; Frank H. Woody, Missoula, M. T.; Sterling B. Toney, Louisville, Ky.; Mullany and H. F. Crane, San Francisco, Cal.; Lyman Williams Reddington, Rutland, Vt., and John Martin, Topeka, Kan., have been admitted to practice.

No. 1027. Jesse J. Murphy v. Alexander Ramsey et al.;

No. 1028. Mary Ann M. Pratt v. Alexander Ramsey et al.;

No. 1029. Mildred E. Randall et al. v. Alexander Ramsey et al.;

No. 1030. Ellen C. Clawson et al. v. Alexander Ramsey et al.;

No. 1061. James M. Barlow v. Alexander Ramsey et al.; appeals from the Supreme Court of the Territory of Utah; judgments in Nos. 1027, 1030 and 1031 affirmed with costs; and in Nos. 1028 and 1029 partly affirmed with costs, and partly reversed and remanded with directions for further proceedings to be had therein in conformity with the opinion of this court. Opinion by Mr. Justice Matthews, Mr. Justice Field dissenting to portion of this opinion.

No. 195. John Stephenson v. The Brooklyn Cross-Town Railroad Company; decree affirmed with costs. Opinion by Mr. Justice Woods.

No. 73. The Knickerbocker Life Insurance Company v. P. H. Pendleton; ordered that the plaintiff in error show cause on Monday, April 6th next, why the judgment rendered on the 5th day of January last should not be vacated and the writ of error dismissed. Announced by Mr. Justice Bradley.

No. 194. Walter Bohall v. D. N. Della; judgment affirmed with costs. Opinion by Mr. Justice Field.

No. 856. The Louisville & Nashville Railroad Company v. Charles W. Ide; judgment affirmed with costs. Opinion by Mr. Chief Justice Waite, Mr. Justice Harlan dissenting. Mr. Justice Blatchford took no part in the decision of this cause.

No. 1246. N. D. Putnam et al. v. George E. Ingraham; judgment affirmed with costs. Opinion by Mr. Chief Justice Waite.

No. 1194. The St. Louis & San Francisco Railroad Company et al. v. Wm. C. Wilson. Opinion by Mr. Chief Justice Waite.

No. 1223. Daniel B. Coe v. Henry Morgan, impleaded, etc.; motion to rescind order docketing and dismissing this cause, and for leave to reinstate upon docket in accordance with the rules denied. Announced by Mr. Chief Justice Waite.

No. 152. Thos. W. Edwards et al. v. Franklin Farrell; motion to strike out order of continuance denied. Announced by Mr. Chief Justice Waite.

No. 624. John A. Morris et al. v. The City of New Orleans; motion to advance granted, and case assigned for second day of next term after cases already assigned for that day.

No. 1286. John H. Starin et al. v. The Mayor, etc., of the City of New York;

No. 1287. The Independent Steamboat Company v. The Mayor, etc., of the City of New York. Motion to advance pursuant to thirty-second rule granted.

No. 1283. James B. Edmonds et al., Commissioners, ets., v. The Baltimore & Potomac Railroad Company. Motion to advance granted and cause assigned for April 6th next, after cases already assigned for that day.

No. 1203. Thomas Howard, plaintiff in error, v. Jodo Marcoline De Franca et al.; dismissed with costs.

SUPREME COURT OF THE DISTRICT OF COLUMBIA

GENERAL TERM.

MARCH 23, 1885.

United States v. May; opinion by Justice Wylie affirming judgment below.

Hewitt v. Lewis; opinion by Justice Wylie, affirming decree below dismissing bill.

Potomac Steamboat Company v. Reed et al; judgment below affirmed. Opinion by Chief Justice.

Waggaman v. Bartlett; remedy exhausted in the action for possession. Opinion by Chief Justice.

Baker Bros. v. Ramsburg; judgment below reversed. Opinion by Chief Justice.

Browning v. District of Columbia; plaintiff have judgment for a verdict.

Burnett v. Church; on hearing.

MARCH 24, 1885.

Potomac Steamboat Company v. R. H. W. Reed et al.; decree of Special Term affirmed with costs.

MARCH 25, 1885.

Rollins v. Robbins; hearing resumed.

Hewitt v. Filbert et al.; judgment for the defendants for costs.

MARCH 26, 1885.

Rollins v. Robbins; submitted.

Fifth Baptist Church v. Baltimore & Potomac Railroad Company; on argument.

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MARCH 27, 1885.

Washington Granite Company v. William E. Chandler; complainant's appeal dismissed.

Gebhard v. Gebhard; administrator; decree below reversed and petition dismissed with costs.

IN EQUITY.—New Suits.

March 21, 1885.

9369. George L. Godfrey et al. v. Lawrason Riggs, jr., et al. Substitution of trustee. Com. sol., C Carlisle.

March 23, 1885.

9370. John H Merriman v. Delia Merriman. For divorce. Com. sol., A. K. Browne.

9371. Margaret Murphy v. Sarah C. Bradley et al. To quiet title. Com. sol, V. B. Edwards.

March 25, 1885.

9372. Joseph B. Bryan v. The Equitable Life Assurance Society of the United States. et al. For acct., and receiver. Com. sols., Appleby & Edmonston.

CIRCUIT COURT.—New Suits at Law.

March 20, 1885.

26041. Edward H. Weed v. Wash. Danenhower et al. Bond, $2343.07. Piffs. attys., Janin and Christy.

26042. James F. Cunningham v. Elizabeth B. Thompson et al. Certiorari. Deffs. atty., M. Dean.

26043. Charles H. Burgess v. Henry Larman. Judgment of Justice Helmick, $65.96. Piffs. atty., George Burgess.

March 21, 1885.

26044. Sarah E. Gray et al v. Otis F. Preerby. Acct., $1200. Piffs. atty., J. Coleman.

March 23, 1885.

26045. Charles E. Creecy v. Samuel E. Arnold. Acct, $160. Piffs. atty., V. B. Edwards.

26046. Wm. Horback v. Martha Kehler. Damages, $1200. Piffs. attys., Webb and Clarke.

March 24, 1885.

26047. Noah Walker & Co v. T. J. Mackey. Certiorari.

26048. Leon Queyrouse v. Charles F. Benjamin Bills of exceange, $1253.31. Piffs. attys, Hornor and Durant.

March 26, 1885

26049. Wolcott Lay v. Henry Eberbach. Replevin. Piffs. atty., W. S. Abert.

PROBATE COURT.—Justice Hagner.

March 27, 1885.

Estate of John P. Butler. Time fixed for hearing petition of Mary E. Wright

Estate of Ann N. Washington. Will admitted to probate.

Estate of John E. Little. Order appointing Caroline Little administratrix and bond fixed at $200

Estate of Mary E. Maroney. Distribution authorised.

Estate of Eleanor and Mary P. Tuttle. Order allowing settlement of certain claims.

Estate of Jonathan Taylor. Citation issued on administors

Estate of Jabez Pittard. Order directing payment of life insurance.

Estate of Jeremiah Sheehan. Order authorizing guardian to make repairs

Estate of Henry Ruchart. Letters granted Frances L. Ruchart and bond fixed at $400.

Estate of August Docher Petition for probate of will, letters testamentary, and guardianship filed.

In re Catharine Bradbury. Order appointing J. W. Bradbury guardian of orphan children; bond, $275.

In re will of W. H. Winsor. Order of publication issued.

Estate of Jane Budd. Letters of administration granted W. Budd; bond $800.

Estate of Salva P. Abell. Will admitted to probate and letters issued to Chas. P Abell; bond, $4,000.

Estate of John W Birch Letters of administration is sued to G W. Harvey; bond. $600

Estate of John Bell. Letters issued to Catharine Bell

Estate of L. B. Culley. Order of publication.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 23d day of March, 1885.

WHITE, HENTZ & CO v. JOHN WEAVER. } No. 25997. At Law. Doc. 30.

On motion of the plaintiffs, by Mr. E. H. Thomas, their attorney, it is ordered that the defendant, John Weaver, cause his appearance to be entered herein on or before the first rule day, occurring forty days after this day; otherwise the cause will be proceeded with as in case of default

By the Court. W. S. COX, Justice.

True Copy. Test: 13 R. J. MEIGS, Clerk.

Legal Notices.

THIS IS TO GIVE NOTICE,

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of James D. Clary, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23d day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23d day of March, 1885.

WILLIAM E. EDMONSTON,

13 Executor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Delos B Sacket, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of March, 1885.

FRANCES ANN SACKET,

GEO. F. APPLEBY, Solicitor. 13 Administratrix.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 20, 1885.

In the matter of the Estate of Bushrod M. Reed dec'd.

Application for Letters of Administration on the estate of Bushrod M. Reed, late of the District of Columbia, has this day been made by Annie L. Reed.

All persons interested are hereby notified to appear in this court on Friday, the 10th day of April next, at 11 o'clock, a. m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: 13 H. J. RAMSDELL, Register of Wills.

A. WEBSTER, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 23d day of March, 1885.

JOHN O'DEA v. ELIZABETH FREY, formerly ELIZABETH MORAN. } No. 26011.

On motion of the complainant, by Mr. E F Arnold, his attorney, it is ordered that the defendant, Elizabeth Frey formerly Elizabeth Moran, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice

True copy. Test: 13 R J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

ABRAHAM KENDICK ET AL. v. BENJAMIN F KENDICK ET AL. } No. 9247. Equity. Doc 24.

Benjamin F Leighton, trustee, in the above-entitled cause, having reported a sale of the lot and premises described in the bill and proceedings, herein to T. A. King for the sum of $1100, cash It is this twenty fifth day of March A. D. 1885, ordered that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 27th day of April next. Provided, a copy of this order be published in the Washington Law Reporter, once a week for three consecutive weeks prior to that day.

By the Court. W. S. COX, Justice.

A true copy. Test: 13 R J. MEIGS, Clerk

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 17th day of March, 1885.

SARAH HELEN E. RYAN v. EDMUND T RYAN } No. 9356.

On motion of the plaintiff, by Mr. Merriman, her solicitor, it is ordered that the defendant. Edmund T Ryan, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.

True copy. Test: 13 R. J. MEIGS, Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 27, 1885

In the matter of the Will of Edward M. Spedden, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Isaac L. Johnson.

All persons interested are hereby notified to appear in this Court on Friday, the 17th day of April next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER. Justice.
Test: 13 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business. March 27, 1885.

In the matter of the Estate of John Minor late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Alice Alena Smith and James F. Jackson

All persons interested are hereby notified to appear in this court on Friday the 17th day of April next at 12 o'clock, m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test; 13 H. J. RAMSDELL. Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Holding a Special Term for Orphans' Court Business. March 27, 1885.

In the case of John E. Latimer, Administrator of John P. Butler, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday the 17th day of April, A. D 1885, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test 13 H. J RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business March 27th, 1885.

In the matter of the Estate of Benjamin K Morsell, late of the Police Force of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Charles E. Creecy

All persons interested are hereby notified to appear in this Court on Friday, the 17th day of April next at 11 o'clock, a. m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test · H. J. RAMSDELL, Register of Wills.
V. B. EDWARDS, Solicitor. 13

THIS IS TO GIVE NOTICE:

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Egbert L. Weaver, late of the District of Columbia, deceased

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of March next: they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of March, 1885.

EFFIE O. WEAVER.
E. B. HAY, Solicitor. 13 Administratrix.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 27th, 1885.

In the matter of the Estate of Jenkin Thomas, late of Georgetown, D. C., deceased

Application for Letters of Administration c. t. a. on the Estate of the said deceased has this day been made by Wm. Riley Deeble (upon petition of said Deeble and Ellen E. Bangs.

All persons interested are hereby notified to appear in this court on Friday the 17th day of April next at 11 o'clock, a. m., to show cause why the said Letters of Administration c. t a. on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day,

By the Court. A. B. HAGNER. Justice.
Test: 13 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 27th, 1885.

In the matter of the Estate of Henry A. Garrett, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased, has this day been made by Laura V. Mothersed.

All persons interested are hereby notified to appear in this court on Friday, the 17th day of April, next, at 11 o'clock m., to show cause why Letters of Administration on the estate of said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 13 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 27th, 1885.

In the matter of the Estate of Langley B. Culley, late of Baltimore, Md., deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Charles Allen, a creditor.

All persons interested are hereby notified to appear in this court on Friday, the 17th day of April next at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

By the Court. A B. HAGNER. Justice.
Test: 13 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 27, 1885.

In the matter of the Will of Catharine Hill, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Joseph F. Hodgson.

All persons interested are hereby notified to appear in this court on Friday the 17th day of April next at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test 13 H. J. RAMSDELL, Register of Wills.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John O. Birch, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of March, 1885.

GEORGE W. HARVEY,
GEO. F. APPLEBY, Solicitor. 13 Administrator.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 27, 1885.

In the matter of the Estate of James L. Gates, late of the Police Force of the District of Columbia, deceased

Application for Letter of Administration on the estate of the said deceased has this day been made by Charles E. Creecy.

All persons interested are hereby notified to appear in this court on Friday the 17th day of April next at 11 o'clock, a m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 13 H J. RAMSDELL, Register of Wills.
V. B EDWARDS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 27th, 1885.

In the matter of the Estate of Francis Straub, late of the Police Force of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Charles E. Creecy.

All persons interested are hereby notified to appear in this court on Friday, the 17th day of April, next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

By the Court. A. B. HAGNER, Justice.
Test: 13 H. J. RAMSDELL, Register of Wills.
V. B EDWARDS, Solicitor. 13

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 13, 1885.

In the matter of the Estate of Benjamin F. Barker, late of the Police Force of the District of Columbia, deceased.

Application for Letters of Administration on the estate of said deceased, has this day been made by William F. Barker.

All persons interested are hereby notified to appear in this court on Friday, the 3d day of April next at 11 o'clock, a m. to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B. HAGNER, Justice.
Test: 11 H. J. RAMSDELL, Register of Wills.
V. B. EDWARDS, Solicitor

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Holding a Special Term for Orphans Court Business. March 13th, 1885.

In the matter of the estate of George A. Gordon, late of Washington, D. C, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Elizabeth R. Gordon

All persons interested are hereby notified to appear in this court on Friday, the 10th day of April next at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 11 H. J. RAMSDELL, Register of Wills.
GORDON & GORDON, Solicitors. 11

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 27, 1885.

In the matter of the Will of William H. Winsor, late of the District of Columbia, deceased.

Application for the probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Solomon E. Faunce.

All persons interested are hereby notified to appear in this court on Friday, the 17th day of April next at 11 o'clock, a. m., to show cause why the said will should not be proved and admitted to probate and Letters Testamentary on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 13 H. J. RAMSDELL, Register of Wills.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of administration c. t. a. on the personal estate of David C. Ralston late of the U. S. Army, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 16th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of March, 1885.

ANDREW A. LIPSCOMB.
13 Administrator c. t. a.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 21st day of March, 1885.

WHITE, HENTZ & CO.
v.
GEORGE B. MANKIN, trading as MANKIN & CO. } No. 26008.

On motion of the plaintiffs, by Mr. Thomas F. Miller, their attorney, it is ordered that the defendant, Geo. B Mankin, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 10 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 20th, 1885.

In the matter of the estate of George Gregory, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration c. t. a. on the Estate of the said deceased has this day been made by Andrew N Medbery, praying that letters issue to George R. Gray.

All persons interested are hereby notified to appear in this court on Friday, the 10th day of April, next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration c t a on the estate of the said deceased should not issue to said George R. Gray as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

By the Court. A. B. HAGNER, Justice.
Test: H. J. RAMSDELL, Register of Wills.
O. T. THOMPSON, Solicitor. 12

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business. March 20th, 1885

In the matter of the Estate of Laura O Taylor, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Georgeanna C Bird.

All persons interested are hereby notified to appear in this Court on Friday, the 3d day of April next, at 11 o'clock, a. m., to show cause why the said will should not be proved and admitted to Probate and Letters Testamentary a m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B HAGNER, Justice.
Test: H. J. RAMSDELL, Register of Wills.
O T. THOMPSON, Solicitor. 12

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business. March 20, 1885.

In the case of Allan Rutherford, administrator of Bernard G Semig, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 10th day of April A. D 1885, at 11 o'clock, a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 12 H. J. RAMSDELL, Register of Wills.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business March 20 1885

In the matter of the Estate of Samuel S Shaffer, late of the Police Force of the District of Columbia deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Charles E. Creecy.

All persons interested are hereby notified to appear in this court on Friday, the 10th day of April next at 11 o'clock. a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 12 H. J. RAMSDELL, Register of Wills.
V. B. EDWARDS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA Holding a Special Term for Orphans Court Business. March 20th, 1885

In the matter of the Estate of Laurence Rossiter, late of the Police Force of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Charles E. Creecy

All persons interested are hereby notified to appear in this court on Friday, the 10th day of April next at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 12 H. J. RAMSDELL, Register of Wills.
V. B EDWARDS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 20, 1885.

In the matter of the Estate of Benjamin Ross, late of the Police Force of the District of Columbia, deceased.

Application for Letter of Administration on the estate of the said deceased has this day been made by Charles E. Creecy.

All persons interested are hereby notified to appear in this court on Friday the 10th day of April next at 11 o'clock, a m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B. HAGNER, Justice.
Test: 12 H J. RAMSDELL, Register of Wills.
V. B EDWARDS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 20th, 1885.

In the matter of the Estate of James B O'Brien, late of the Police Force of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Charles E Creecy.

All persons interested are hereby notified to appear in this court on Friday, the tenth day of April, next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

By the Court. A. B. HAGNER, Justice.
Test: 12 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business March 20th, 1885.

In the matter of the Estate of Henry Nash, late of the Police Force of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Charles E. Creecy

All persons interested are hereby notified to appear in this Court on Friday, the 10th day of April next at 11 o'clock, a m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B HAGNER, Justice.
Test: H. J RAMSDELL, Register of Wills.
V. B. EDWARDS, Solicitor. 12

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, March 20th, 1885.

In the matter of the Estate of Lafayette Jacobs, late of the Police Force of the District of Columbia deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Charles E Creecy.

All persons interested are hereby notified to appear in this court on Friday, the 10th day of April next at 11 o'clock, a m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 12 H. J. RAMSDELL Register of Wills
V. B EDWARDS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 20th, 1885.

In the matter of the Estate of Benjamin C. Berry, late of the Police Force of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Charles E Creecy.

All persons interested are hereby notified to appear in this court on Friday, the 10th day of April next at 11 o'clock, a. m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. ALEXANDER B. HAGNER; Justice.
Test 12 H. J. RAMSDELL, Register of Wills.
V. B. EDWARDS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 20, 1885.

In the matter of the Estate of James A. Beattie, late of the Police Force of the District of Columbia deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Charles E. Creecy.

All persons interested are hereby notified to appear in this court on Friday the 10th day of April next at 11 o'clock, a. m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 12 H J RAMSDELL, Register of Wills.
V. B EDWARDS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 13, 1885.

In the matter of the Estate of W Wallace Grant, late of the Police Force of the District of Columbia, deceased.

Application for Letters of Administration on the estate of said deceased, has this day been made by Charles E. Creecy,

All persons interested are hereby notified to appear in this court on Friday, the 3d day of April next at 11 o'clock, a m. to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B HAGNER, Justice.
Test 11 H J. RAMSDELL, Register of Wills.
V. B EDWARDS, Solicitor

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business March 13, 1885.

In the matter of the Estate of Samuel W Koontz late of the Police Force of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Charles E. Creecy

All persons interested are hereby notified to appear in this court on Friday the 3d day of April next at 11 o'clock, a m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test; 11 H. J. RAMSDELL. Register of Wills.
V. B. EDWARDS, Solicitor.

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Legal Notices.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary, on the personal estate of Daniel Brown, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of March next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 13th day of March, 1885.
his
11 THEODORE ⋈ WILLIAMS, Executor.
mark
GORDON & GORDON, Solicitors.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 13, 1885.
In the matter of the Estate of Charles Miller.
Application for Letters of Administration on the estate of Charles Miller, late of the District of Columbia, has this day been made by Henry R. Miles.
All persons interested are hereby notified to appear in this court on Friday the 3d day of April next at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. A. B. HAGNER, Justice.
Test: 11 H. J. RAMSDELL, Register of Wills.
A C RICHARDS, Solicitor,

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business March 13, 1885.
In the case of Randall Hagner and Samuel Maddox, Administrators c. t. a., of Ann Randall, deceased, the Administrators c. t a. have, with the approval of the court, appointed Friday, the 10th day of April, A. D. 1885, at 11 o'clock a. m, for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrators c. t a will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
Test: 11 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 13, 1885.
In the matter of the Estate of Augustus Wusterfeld, late of the Police Force of the District of Columbia, deceased
Application for Letter of Administration on the estate of the said deceased has this day been made by Charles E. Creecy.
All persons interested are hereby notified to appear in this court on Friday the third day of April next at 11 o'clock, a m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. A B. HAGNER, Justice.
Test 11 H J. RAMSDELL, Register of Wills.
V. B. EDWARDS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 13, 1885.
In the matter of the Estate of Leon Sidi, late of Smyrna, Asia Minor, deceased.
Application for Letters of Administration on the Estate of the said deceased, has this day been made by John E. Risley, of New York, N Y.
All persons interested are hereby notified to appear in this court on Friday the 3d day of April next at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. A. B. HAGNER, Justice.
Test 11 H. J. RAMSDELL, Register of Wills.
JOHN PAUL JONES, Solicitor.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business March 13, 1885.
In the matter of the Estate of Peter A. Becker, late of the Police Force of the District of Columbia deceased.
Application for Letters of Administration on the estate of the said deceased has this day been made by Charles E. Creecy.
All persons interested are hereby notified to appear in this court on Friday, the 3d day of April next at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. A. B. HAGNER, Justice.
Test: 11 H. J. RAMSDELL, Register of Wills.
V. B. EDWARDS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Holding a Special Term for Orphans Court Business. March 13th, 1885.
In the matter of the Estate of Samuel Lester, late of the Police Force of the District of Columbia, deceased.
Application for Letters of Administration on the estate of the said deceased has this day been made by Charles E. Creecy.
All persons interested are hereby notified to appear in this court on Friday, the 3d day of April next at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. A. B. HAGNER, Justice.
Test 11 H. J. RAMSDELL, Register of Wills.
V B EDWARDS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, March 13th, 1885.
In the matter of the Estate of Benjamin F. Barker, late of the Police Force of the District of Columbia, deceased.
Application for Letters of Administration on the estate of the said deceased has this day been made by William F. Barker.
All persons interested are hereby notified to appear in this court on Friday, the 3d day of April next at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. A. B. HAGNER, Justice.
Test: 11 H. J. RAMSDELL Register of Wills.
V. B. EDWARDS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 13, 1885.
In the matter of the Estate of Charles Ashton, late of the Police Force of the District of Columbia, deceased.
Application for Letters of Administration on the estate of the said deceased has this day been made by Jane Ashton.
All persons interested are hereby notified to appear in this court on Friday the 3d day of April next at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed, Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. A. B. HAGNER, Justice.
Test: 11 H J RAMSDELL, Register of Wills.
V. B. EDWARDS, Solicitor.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Peter D Posey, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 13th day of March next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 13th day of March, 1885.
SAMUEL C. BUSEY, Executor.
JAS. H. SAVILLE, Solicitor 11

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 13, 1885

In the matter of the Estate of Samuel T. Crown, late of Washington, D C, deceased.

Application for Letters of Administration on the Estate of the said deceased, has this day been made by William S. Crown.

All persons interested are hereby notified to appear in this Court on Friday, the 3d day of April next, at 11 o'clock a. m., to show cause why the said Letters of Administration, on the estate of the said deceased should not issue as prayed Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B HAGNER. Justice.
Test: H. J. RAMSDELL, Register of Wills.
GORDON & GORDON, Solicitors. 11

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 11th, 1885

In the matter of the Estate of Gorge A. Gordon, late of Washington, D. C, deceased

Application for Letters of Administration of the Estate of the said deceased, has this day been made Elizabeth R. Gordon.

All persons interested are hereby notified to appear in this court on Friday, the 3d day of April, next, at 12 o'clock m., to show cause why Letters of Administration on the estate of said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 11 H. J. RAMSDELL, Register of Wills.
GORDON & GORDON, Solicitors.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 13th, 1885.

In the matter of the Estate of Dennis Austin McCarthy, late of the City of Washington, District of Columbia, dec'd.

Application for Letters of Administration on the Estate of the said deceased, has this day been made by Anne McCarthy of the said City and District.

All persons interested are hereby notified to appear in this court on Friday, the 3d day of April next at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

By the Court. A B. HAGNER. Justice.
Test 11 H. J. RAMSDELL, Register of Wills.
JOHN E McNALLY, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business March 13th, 1885.

In the matter of the Estate of George H Walker, late of the Police Force of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Mary O Walker.

All persons interested are hereby notified to appear in this court on Friday, the third day of April, next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

By the Court. A. B. HAGNER, Justice.
Test: 11 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business March 13th, 1885.

In the matter of the Estate of Alexander Tait, late of the Police Force of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Victoria H Hough.

All persons interested are hereby notified to appear in this Court on Friday the 3d day of April next at 11 o'clock, a m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B HAGNER, Justice.
Test: H. J RAMSDELL, Register of Wills.
V. B. EDWARDS, Solicitor. 11

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 13th, 1885.

In the matter of the Estate of Jefferson Robinson, late of the Police Force of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Matilda Robinson.

All persons interested are hereby notified to appear in this court on Friday, the 3d day of April next at 11 o'clock, a. m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. ALEXANDER B. HAGNER, Justice.
Test 11 H. J. RAMSDELL, Register of Wills.
V. B. EDWARDS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 13th, 1885.

In the matter of the estate of John A. W. Clarvoe, late of the Police Force of the District of Columbia deceased

Application for Letters of Administration on the Estate the said deceased has this day been made by Martha R. Clarvoe.

All persons interested are hereby notified to appear in this court on Friday, the 3d day of April, next, at 11 o'clock a. m., to show cause why the said Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: H. J. RAMSDELL, Register of Wills.
V. B EDWARDS, Solicitor. 11

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business. March 13th, 1885

In the matter of the Estate of David R. P. Bigley, late of the Police Force of the District of Columbia, deceased

Application for Letters of Administration on the estate of the said deceased has this day been made by Mary Alice Bigley.

All persons interested are hereby notified to appear in this Court on Friday, the 3d day of April next, at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B HAGNER, Justice.
Test: H J RAMSDELL, Register of Wills.
V B EDWARDS Solicitor. 11

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 13, 1885.

In the matter of the Estate of John D Nutting, late of the Police Force of the District of Columbia, deceased.

Application for Letters of Administration on the estate of said deceased, has this day been made by Charles E. Creecy.

All persons interested are hereby notified to appear in this court on Friday, the 3d day of April next at 11 o'clock, a m. to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B HAGNER, Justice.
Test 11 H J. RAMSDELL, Register of Wills.
V. B. EDWARDS, Solicitor

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business March 13, 1885.

In the matter of the Estate of Moses Meredith late of the Police Force of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Charles E. Creecy

All persons interested are hereby notified to appear in this court on Friday the 3d day of April next at 11 o'clock, a m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test; 11 H. J. RAMSDELL. Register of Wills.
V. B. EDWARDS, Solicitor.

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Legal Notices.

THIS IS TO GIVE NOTICE,
That the subscriber, of Springfield, Vermont, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Reuben A. Bacon, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of March next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 7th day of March, 1885.
ROBERT M. COLBURN,
11 Executor.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Alfred Falconer, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of March next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 10th day of March, 1885.
11 ERASTUS M. CHAPIN, Executor.

THIS IS TO GIVE NOTICE:
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Samuel Pumphrey, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of March next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 10th day of March, 1885.
C. C. MEADOR,
J. J. DARLINGTON, Solicitor. 11 Administrator.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Elizabeth Wirt Goldsborough, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of March next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 13th day of March, 1885.
WM. WIRT, Administrator.
R. B. LEWIS, Solicitor. 11

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 10th day of March, 1885.
CLARA J. HEYLAND ET AL. v. MARSHAL WALLACH ET AL } No. 9294. Eq. Doc. 24.
On motion of the plaintiffs, by Mr. Irving Williamson, their solicitor, it is ordered that the defendants, Marshal Wallach, Adelaide S. Carusi, and Genevieve Carusi, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.
By the Court. A. B. HAGNER, Justice.
True copy. Test: 11 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business March 13th, 1885.
In the matter of the Estate of John Beck, late of the City of Washington, deceased
Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by Christian Ruppert and John L. Vogt
All persons interested are hereby notified to appear in this court on Friday the 3d day of April next at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. A. B. HAGNER. Justice.
Test: 11 H. J. RAMSDELL, Register of Wills.
HANNA & JOHNSTON, Solicitors.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
HARRIET A. SAUNDERS ET AL. v. JAMES L. SAUNDERS ET AL. } In Equity. No. 6888.
Upon the consideration of the report of Albert McIntosh, trustee, in the above cause, it is this sixth day of March, 1885, ordered that the sale of the real estate therein mentioned to Robert Johnson be ratified and confirmed, unless cause to the contrary be shown on or before the seventh day of April, 1885. Provided, a copy of this order be published once a week for each of three successive weeks in the daily Evening Star, in the said District, before the 7th day of April, 1885.
A. B. HAGNER.
A true copy. Test: 11 R. J. MEIGS. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 13th, 1885.
In the matter of the Estate of Mary Ann Hagan, late of Washington City, deceased.
Application for Letters of Administration on the Estate of the said deceased, has this day been made by Michael J. Keane.
All persons interested are hereby notified to appear in this court on Friday, the 3d day of April, next, at 11 o'clock m., to show cause why Letters of Administration on the estate of said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. A. B. HAGNER, Justice.
Test: H. J. RAMSDELL, Register of Wills.
HANNA & JOHNSTON, Solicitors. 11

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 13th, 1885.
In the matter of the Estate of Hannah Adler, late of the District of Columbia, deceased.
Application for Letters of Administration, on the Estate of the said deceased has this day been made by Henry Adler.
All persons interested are hereby notified to appear in this court on Friday, the 3d day of April next at 12 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day
By the Court. A. B. HAGNER. Justice.
Test: 11 H. J. RAMSDELL, Register of Wills.
SIMON WOLF. Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 13, 1885.
In the matter of the Estate of Maria Christine Koch, late of the District of Columbia, deceased.
Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Werner Koch.
All persons interested are hereby notified to appear in this court on Friday the 3d day of April next at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. A. B. HAGNER, Justice.
Test 11 H. J. RAMSDELL, Register of Wills.
LOUIS SCHADE, Solicitor

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 13. 1885.
In the matter of the Estate of Thomas B Medary, late of the District of Columbia, deceased.
Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Kittie W. Medary.
All persons interested are hereby notified to appear in this Court on Friday, the 3d day of April next, at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day
By the Court. A B HAGNER. Justice.
Test: H. J. RAMSDELL, Register of Wills.
EDWARDS & BARNARD, Solicitors. 11

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Washington Law Reporter

WASHINGTON - - - - - - - - April 4, 1885.

GEORGE B. CORKHILL - - - EDITOR

THE case of Root v. Clay, Commissioner Telephone Company, decided in the Supreme Court of Pennsylvania, and reported in 42 Leg. Intel., 120, holds that where, in a suit for wages, it was alleged as a defence that the plaintiff was discharged for bringing suit against his employer, and it was contended that when a servant brings suit he is guilty of a breach of duty which justifies his discharge. If this be true, it would be in the power of an employer to withhold unjustly the servant's wages, and thus force him to forego them or lose his place. While it is undoubted that faithful service is a condition precedent to a servant's right to compensation, his bringing suit for wages due is not a breach of duty or a sufficient cause for withholding his wages.

Myers' Federal Decisions.

The receipt of volumes 4 and 5 of this already celebrated work is acknowledged with pleasure. Volume 4 (Bonds to By-Laws) treats exhaustively of the subject of Bonds, under two grand heads, viz., 1st, Official and other Penal Bonds. 2nd, Municipal and other Corporate Securities. All the important cases are printed in full, and the others are digested in a masterly manner, as is the mode of arranging them in this work. Volume 5 (California to Conspiracy) treats of Carriers, Champerty, Churches, Citizens, Consignor and Consignee, in the same manner.

We have already expressed the highest opinion of this work. If one will only glance at the volumes to be included in this series when completed, he cannot fail to be strongly impressed with its value. Taken, also, from an economical point of view, it may safely be said that in these volumes, when completed as a series, will be included such matter as, if it were to be gotten by purchase of the volumes themselves which contain the original reports of the cases, would cost not less than $2,000. Here the whole are contained, and in such compact shape as to be easily handled and found, occupying but little space, and at probably one-tenth of the expense which would otherwise be incurred. The cases in volume 4, which were not deemed of sufficient importance to be printed in full, were examined by Mr. John W. Daniel, the well known author, and he was of opinion that good judgment had been exercised in excluding them, as he considered that the same points were covered by other cases printed in full. The subject of Carriers, in volume 5, was edited by James Schouler, esq., and the publishers correctly considered that it was not necessary to submit the cases on that subject to any other editor. Those on Champerty and Maintenance, and Churches and Benevolent Associations, were examined by Mr. Melville M. Bigelow, the author of many valuable works, and he considered that no changes were necessary. Those on citizens and aliens, and consignor and consignee, were submitted to and examined by Mr. James Schouler, and he considered that the cases were well selected and digested. We have always regarded these books as of peculiar value, and our estimation of them continually increases with the receipt of each volume. We hope that all lawyers will give this work their close consideration, and there can be doubt but that an examination of them will be regretted by none.

THE COURTS have decided that no boundary fences can be made of barbed wire without consent of parties owning the adjacent land, and any man who puts a barbed wire fence along the highway renders himself liable for all injuries resulting to stock passing along said highway.

IT IS proposed in Chicago to change the hour for jury trials so as to have them commence at 1 o'clock instead of 9 as heretofore. By this arrangement the juror would not be taken away from his business during the best part of the day. The court might occupy the *interim* from 9 to 1 in hearing equity cases, motions arguments on instruction and such matters.

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Muskingum County (O.) Common Pleas.

AARON HERZBERG *v.* D. G. WILLEY, Treasurer, etc.

Assessment Paid Under Scott Law—When Not Recoverable.

1. An action under section 5850, Revised Statutes, to recover taxes illegally collected by a county treasurer, must be brought against the person who, as such treasurer, made the collection.
2. An assessment under the Scott liquor law, collected after the constitutionality of said law had been settled by the Supreme Court, and before the act was, by the same court, held to be unconstitutional, cannot be recovered back, even though paid under compulsion.

PHILLIPS, J.: Herzberg sues Willey, as Treasurer of Muskingum county, to recover back certain taxes by him paid under the Scott law, January 16, 1884, alleging that he paid the same under compulsion, to prevent the seizure of his property, etc. The defendant demurs.

Section 5850 of the Revised Statutes provides that "actions to recover back taxes and assessments, must be brought against the officer who made the collection, or, if he be dead, against his personal representative."

I construe this statute to mean that such action must be brought against the *person* who, as treasurer, made the collection, and that it must be against him individually. An action against one "as treasurer" is an action against the *county*, and not against an *individual*. This statute rests upon the principle that an officer who compels payment of money, without authority of law, is liable as a trespasser. 3 Ohio, 370; 1 O. S., 153; 2 O. S., 647; 7 O. S., 42.

This action, being against the successor of the person who made the collection, and against him "as treasurer," cannot be maintained. And this disposes of the demurrer, upon the only question that has been argued by counsel.

But I sustain this demurrer upon the broad ground that this collection, when made, was not illegal, but was authorized and required by law. At the time this collection was made, the Scott law was in force, and its constitutionality had been settled by a decision of the Supreme Court of the State. Afterward, the same court overruled its former decision, and held the law to be unconstitutional.

It is the right, and it is the duty, of a court, "for very cogent reasons, and upon a clear manifestation of error," to overrule its former decision. And I am not unmindful of the rule that gives retroactive operation to such correction of judicial errors. This rule—resting somewhat upon a legal subtlety—gives to judicial acts an operation denied, by the Constitution, to legislative acts. But property rights, and contract rights, acquired upon the faith of the correctness of the former adjudication, have always been protected from the unsettling effects of this technical rule. This protection, formerly standing as a mere exception growing out of necessity, now rests, I think, upon the broad and rational ground that a law enacted by the supreme legislative power of the State, and sanctioned by the solemn and deliberate judgment of the supreme judicial power of the State, has, until repealed or annulled, some effect and operation as a law. The judicial construction becomes a part of the law, and there can be no higher evidence of its correctness and validity; the community have a right to regard it as a just exposition of the law, and to regulate their actions and contracts by it. 15 O. S., 703; 1 Kent Com., 475.

Under an act of the legislature of Missouri, to facilitate the construction of railroads in the State, county bonds were issued and put upon the market as commercial paper. The Supreme Court of the State, having first held the law to be constitutional, thereafter overruled its former decision, and held the law to be unconstitutional. In an action on bonds purchased after the former decision, and before the latter, the Supreme Court of the United States held that the rights of the parties thereto are to be determined according to the statutes of the State as they were then construed by her highest court; that the settled judicial construction of a statute, so far as contract rights were thereunder acquired, is as much a part of the statute as the text itself; and that a change of decision is the same in its effect on pre-existing contracts, as a repeal or an amendment by legislative enactment. Douglass v. County of Pike, 101 U. S. Rep., 677.

It is the exclusive right of the judiciary to interpret the Constitution, as well as all laws passed thereunder; and I suggest that when the constitutionality of a law is settled by judicial construction, such law, so validated, then rests upon constitutional authority likewise validated by such construction.

This principle of validation by judicial construction rests upon the soundest reason, and if it is to be applied to protect those who voluntarily enter into contracts, relying upon the validity of the law, *a fortiori*, it should protect an officer in the performance of the very act required by the law in question.

When this collection was made, the validity of the law in question was as certain as the wisdom of human tribunals could make it; and the thing here complained of is an official

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act then required by that law to be done. Is a faithful officer to be made personally liable for an official act required of him by the combined legislative and judicial powers of the State? Certainly not, unless to avoid greater wrong to the plaintiff. But every presumption was in favor of the validity of this law, and of the correctness of its construction as then settled; and it is fair to assume that when the plaintiff chose to engage in the business, and paid the assessment, he at once put his business upon a basis that would return to him the money so paid to the county.

I am not called upon to decide what constitutes payment under compulsion, as the averments of the petition would answer even the requirements of the common law in that regard.

Demurrer sustained.

Rebecca Jones' Contempt.

The General Term of the Supreme Court of New York recently gave a decision reversing the order of the surrogate, committing Rebecca Jones to Ludlow Street Jail, in May last, for contempt for refusing to answer certain questions put to her as a witness in the Hamersley will case. Presiding Judge Davis, in his opinion, concurred in by Judge Daniels, reviews the provisions of the Code in reference to contempt, and refers to the recital and mandate of the commitment as follows:

The relator's contempt consisted in her refusal to answer the questions actually propounded to her on the 19th of May, and not in refusing to answer such questions as may or shall be thereafter put to her as a witness in the proceedings. She was entitled at any moment to purge her contempt by paying her fine and going into court and answering the questions which had been propounded and refused on that day. If she should then refuse to answer other proper questions, she would be guilty of a new contempt, and might then again be punished, but she could not be adjudged guilty of that contempt until the exigency arose. The statute is explicit that where the contempt is an omission to perform an act or duty, which it is yet in the power of the offender to perform, he shall be imprisoned only until he has performed it. The act or duty of the relator in this case was to answer the questions propounded to and refused by her on the 19th day of May, 1884. It was yet in her power to perform that act or duty, as the surrogate, we must assume, continued the case for that purpose. The statute is also explicit that the order and the warrant of commitment "must specify the act or duty to be performed, and the sum to be paid," so that by payment and performance of these specified things, the party convicted of the civil contempt can promptly terminate his imprisonment.

But this writ of commitment is not of that character. The relator under its mandate could not at any time pay her fine and demand to terminate her imprisonment by going before the surrogate and answering the questions she had refused to answer (though that was doubtless the intention), because the writ of commitment required and the order as recited also required that she should answer "such legal and proper interrogatories as shall be propounded to her as a witness in this cause," and "make answer to such legal and proper interrogatories which may be propounded to her as a witness in the proceeding aforesaid." Neither the process nor the order as recited gave her the opportunity to purge her contempt and terminate her imprisonment as the provisions of the Code prescribe by doing the things she had refused to do; that is, simply to answer the questions actually put on the 19th day of May. In order to entitle her to her discharge according to the exigency of the writ, she must, under the order and writ, not only answer the questions if propounded, in respect of which she is in contempt, but all other legal and proper interrogatories that "shall" or "may" be propounded to her in respect of which she is not in contempt.

There is no question but that the relator's contempt was marked, obstinate, and altogether without excuse. There is no call for any sympathy in her case. The learned surrogate doubtless treated her with all the consideration due to her sex and condition, and gave her every opportunity to escape the consequences of her own folly. When it became his manifest duty to punish her singular and persistent obstinacy, he did so with a commendable firmness which deserves approbation. It is to be regretted that the process of commitment was not prepared for his signature with a closer observation of the requirements of the Code. While we feel constrained to hold that the writ is so far irregular as not to warrant the longer imprisonment of the relator, we are glad to say that there is nothing in the case that will prevent the witness from being brought again into court for examination, and on a like refusal to testify, being subjected to whatever punishment is necessary to make her obedient to the primary duty under our government and laws of every good citizen when brought as a witness into a court of justice, which is to speak "the truth, the whole truth and nothing but the truth," touching the

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subject matter of a controversy. If the power to compel this did not exist, then justice may be defeated in every effort to redress the wrongs and enforce the rights of litigants.

The order appealed from must be reversed, and an order entered discharging the relator from custody under the writ of commitment, but without costs.

A NOVEL question was tried and determined by the new Circuit Court of Portage County, Ohio, in the case of Lucien A. Wright v. Henry Barholt. The plaintiff and defendant went out in the highway to fight by mutual agreement. In the struggle, the defendant bit the left wrist and the little finger of the right hand of the plaintiff. Barholt was a man with a good set of double teeth all around his mouth, and his bite was so severe as to make amputation of the finger necessary. The plaintiff brought his action in the Common Pleas Court, to recover compensatory as well as exemplary damages for the injuries he sustained from the defendant, in the sum of $5,000. The case was tried to a jury at May Term, 1884, before Judge Spear, who charged the jury, that if they found that plaintiff and defendant went out to fight by agreement (which was conceded), the act of each would be unlawful, and neither party could recover for injuries sustained. The jury were therefore compelled to find for the defendant. The plaintiff, by his counsel, excepted, and filed his petition in error to review the same.

The circuit court, after careful consideration, unanimously came to a different conclusion, and reversed the holding of Judge Spear. The authorities were carefully collected by plaintiff's attorney, and seem to be uniform wherever the question has been passed upon. The act being unlawful, neither party could consent to it, and the person causing an injury to another by an act which was unlawful, is liable therefor. Greenleaf, sec. 85; Cooley on Torts, 163; 33 Indiana, 531; 35 N. H., 503; 1 Hawks (N. C.), 420; 3 Jones (N. C.), 131; 1 Stew. (Ala.), 476; 119 Mass., 350; 2 Texas, 501; Hilliard on Torts, 1, 183; Buller's N. P., 16; Shay v. Thompson, 18 N. W. Rep., 473; 18 Am. Law Rev., 461, being a late case decided by the Supreme Court of Wisconsin.

It was thought at first to be a mooted question, but the text-books and the adjudicated cases make it the settled law of the land. The cause was remanded to the Common Pleas Court for new trial.

IT IS exceedingly bad husbandry to harrow up the feelings of your wife.

Accommodation Endorser.

The Supreme Court of New York in the recent case of Raven v. Rubino, 27 Daily Reg., 73, passed upon the question of the liability of the wife as a mere accommodation endorser for the husband. The case may be thus stated: A was a customer of plaintiffs, who were stock brokers, in the buying and selling stocks, and in January, 1881, was indebted to them in about $1,000. Plaintiffs having declined to do any further business for him without security, the wife of A made the note in suit for $5,000, which was charged upon her separate estate, payable to the order of plaintiffs, and delivered it to her husband, solely for his accommodation. A endorsed the note and delivered it to plaintiffs, who received it as margin or security for a credit of $5,000 from them in the buying and selling of stocks by them for him. The plaintiffs, after receiving the note, repudiated their contract to give the credit agreed upon, and closing the account by selling the stocks and securities standing to A's credit with them, without notice to him, sued upon the note for an alleged balance due on the account.

Held, That as the wife of A was a mere accommodation maker of the notes the sole consideration for which was the agreement between plaintiffs and her husband, the breach by plaintiffs of that agreement was a failure of the consideration of the note, and the same cannot be enforced by an action based upon the instrument or endorsement.

In the course of the opinion the court say: "This action is upon a promissory note of $4,000 made by the defendant, Eda Rubino, and by her charged upon her separate estate, and endorsed by Eugene Rubino, her husband. The material facts of the case, as found by the referee, are substantially as follows: That Eugene Rubino, prior to the making of the note, was a customer of the plaintiffs, who were stock brokers, in buying and selling stocks and speculating. The plaintiffs had bought and sold for him to some extent without margins, and on or about the eleventh of January, 1881, Mr. Rubino was indebted to them in about $1,000, if the account had then been finally closed, and the plaintiffs declined to do any further business for him without security. At or about that time Mrs. Rubino made the note in suit for $5,000, payable to the order of plaintiffs on demand, and delivered the same to her husband, solely for his accommodation, and without any other consideration. Mrs. Rubino had a separate estate, and by a writing on the back of the note she charged the same

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upon that estate. On the twelfth of January, 1881, Mr. Rubino endorsed the note and delivered it to the plaintiffs, under and pursuant to an agreement made between them, which the referee finds in these words: "That the said note was deposited with and received by the plaintiffs as margin or security, in consideration of which the said Eugene Rubino was to have and receive a credit to the extent of $5,000 with and from the plaintiffs; that the plaintiffs would thereupon, for the usual commissions, upon the order of the defendant, Eugene Rubino, purchase and sell stocks, bonds and other securities, and buy and sell and hold and carry the same so long as said defendant should desire, unless said security or margin, as represented by said note, should be exhausted; and that plaintiffs would not then dispose of the same until after they had demanded of the said defendant increased security or margin, or that he take the stocks and pay the market price thereof, and that plaintiffs would give him due notice of the time and place of the disposition thereof, and due opportunity to make good his margin or security."

The referee further finds, in substance, that after receiving the note under this agreement the plaintiffs repudiated their contract, and refused to keep the same and to give Mr. Rubino the credit agreed upon, and that they sold and disposed of the stocks and securities to his credit without his direction or consent and without notice or demand for other margin and without waiting till the exhaustion of the margin or more than a small portion of it, and on the twenty-seventh of January, 1881, closed the account by the sale of all the stocks then to his credit with them, without notice to him. On closing the account, the plaintiffs claim there was a balance due and owing thereon of $1,708.10, for which suit is brought upon the note. Various additional facts were found by the referee, but enough has been stated to indicate the defence. Upon these facts, it is plain that Mrs. Rubino was a mere accommodation maker of the note for the benefit of her husband; that she herself had no dealings with plaintiffs on her own account, and that the sole consideration for the note was the agreement made between the plaintiffs and her husband at the time of the delivery to the plaintiffs. The breach of that agreement, as found by the referee, on the part of plaintiffs was a failure of the consideration of the note, and the same cannot be enforced by an action based upon the instrument or its endorsement. Bookslaver v. Jayne, 60 N. Y., 146; Brewers' Ins. Co. v. Burger, 10 Hun, 56; Beauford v. Patterson, 63 How., 81.

Legal Definitions.

In speaking respecting some critical objections made by William P. Wade in his article on "Actual Notice" the *Daily Register* says that they are very well put, and point to the same conclusion as the pithy saying of an English judge, that "Nothing is so dangerous as a definition," and then goes on to say that "in other departments of knowledge definitions are means of instruction; in the law they are often the necessary test in practice. In other words, in the law, to determine whether a particular person has a particular right, the definition of that right is often the necessary instrument of arriving at a practical conclusion; and in this respect law differs from almost every other practical science.

"Nothing is more difficult, however, than to frame a safe definition, because as in one sense may truly be said, he who frames a definition of an abstract term, as most of the terms used in law are, is not describing an external thing, but contemplating and defining his own conception of that thing or of a relation of things; and unless his conversance with concrete instances has been very large, his conception will be apt to be lacking in some important element. Almost any word will afford a good illustration of this. For instance, piracy was defined by no less an authority than Judge Story as 'robbery upon the high seas.' If we could ask Judge Story if a robbery committed, for instance, by one emigrant passenger upon another in the steerage of a ship at sea would be piracy, what would be his answer? It is not improbable that his answer would disclose that this was an act not at all within his conception, and that when he used the words he did, it did not occur to him that they necessarily included this conception.

"The different elements which may enter into the conception entertained by different jurists, as suggested by the same legal term, are well illustrated in this same connection by the fact that Greenleaf, if we recollect right, includes, in his definition of piracy, a descent upon the coast from a vessel with the committing of robbery on land, while Sir James Stephen intimates that, in his thought, the wrongful taking control of a vessel is an invariable element in piracy. Each of these two authors had a conception awakened in his mind by the term piracy, which was not awakened in the other, and Mr. Wade very well says that 'It is equally unfair to criticise or to adopt as definitions the generalizations indulged in by the courts when they encounter phrases which they are called upon to construe. It is unfair to criticise, because

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the important matter for the consideration of the court is the application of the phrase construed to the case at bar, and consequently the definition resorted to is correct, if, as applied to that case, it enables the court to give a sound reason for a just conclusion. It is unsafe to accept definitions formulated for special application and attempt to apply them generally. The judge, in writing an opinion, cannot be expected to compose an exhaustive treatise upon every branch of the law touched upon. It is sufficient if he gives the law of the case correctly. And though he may discuss general principles ever so cautiously, he cannot disencumber his mind of the reflection that they are limited in their application to the case, with all its special circumstances."

Recovery of Deposit from Insolvent Bank.

In the case of Morrison v. Needham, Judge Horne, of the Cincinnati Superior Court, said that: "If one who has deposited a draft in an insolvent bank can reclaim it of the bank or its receiver on account of fraud on the part of the bank in concealing its insolvency, it must be upon grounds similar to those upon which a seller is entitled to recover goods sold to an insolvent purchaser. 2 Lansing, 81; 34 N. J., Eq., 367. In such cases the seller must show not only that the purchaser was insolvent, but also that at the time when he purchased the goods he intended not to pay for them. Bigelow, Fraud, 37; Benjamin, Sales (4th Am. ed. by Bennett), § 440; Kerr, Fraud (11th Am. ed) 108 note.

Where money is deposited in bank on general account, no trust of bailment is thereby created, but only the relation of debtor and creditor, and the depositor cannot claim the specific money deposited, nor assert any preferred lien therefor against the assets of such bank. Morse, Banks, (2d ed. 29); Edwards, Bailments, (2d ed.) § 41; 127 Mass. 298.

"If a draft is endorsed in blank and deposited in bank, and is afterwards, by the bank, sold, pledged or applied in payment of its debt due to a creditor, the depositor cannot thereafter recover such draft. Dunlap's Paley's Agency (4th Am. ed.) 263; Story Agency (8th ed.) § 228.

"When a draft has been deposited in a bank by one of its customers the presumption, in the absence to the contrary, is, that it was not the intention to transfer the ownership of it to the bank, but only to deposit it for collection, with the implied understanding that when collected the proceeds should be treated as having been deposited at the date of his deposit of the draft. And the weight of authority seems to be that this presumption is not overcome by the fact that the bank credited the amount of his draft as so much cash, nor by the fact that interest was allowed on it. Where this presumption has not been overcome, the bank is not bound, as upon an absolute purchase, for the credit given. Morse, Banks (2d ed.) 427; 1 Dan. Neg. Inst. (3d ed.) § 33; 2 Id., §§ 1622, 1623; 51 Cal., 65; 10 Alb. L. J., 252. And the depositor remains the owner of the draft until it has been collected or passed into the hands of a *bona fide* holder. 9 East., 12; 2 Barn. & Co., 422; De Gex & Jones, 194, 15; (4th ed.) Rep., 675; Dunlap's Paley's Agency (4th Am. ed.) 91; Story Agency (8th ed.) § 228, note 4; 6 Vroom, 592; 34 N. J., Eq., 367; 90 N. Y., 580, distinguished. But where such draft is not merely credited as cash, but is so deposited and credited, with the understanding both by the bank and by the depositor that it is to be treated the same as a deposit of money and not as a deposit for collection, then the bank becomes the owner, and must bear the loss if the draft proves worthless. and the depositor loses his right to claim the draft if the bank becomes involved."

Unmarried.

A decision of some little practical importance to maids, wives and widows, and of considerable interest to draftsmen and others who may wish to write good and clear English, is to be found in the case of In re Sergeant, Mertens v. Walley, 54 Law J. Rep., Chanc. 159, reported in the February number of the *Law Journal Reports*. It involved the meaning of the word "unmarried," used in a bequest made to certain ladies, and coming into operation after the death of a tenant for life. Two questions were raised — first, whether the condition referred to was the condition held at the time of the death of the testator or at the death of the tenant for life? and, second and more important, whether "unmarried" meant never having been married, or not being married? Upon the second question purists in the use of English will probably find a way of cutting the knot. Their answer will be that it means neither. They will object in the first place to the use of the word "unmarried" at all, and in the second place they will say that if it means anything it means divorced. The prefix used reverses the meaning of the word to which it is prefixed, and does not act as a simple negative. If "untied" means with the tie unravelled, "unmarried" means with the marriage dissolved. But the draftsmen of wills are not ticklers for good English. They have

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an English of their own, which in general is good enough for their purposes if it is not obscure. If they avoid the word "unmarried" it is for its obscurity, even in its conventional sense, and not for its radical deficiencies in etymology. In any case, the draftsman had used the word and it remained for the court to give a meaning to it.

Mr. Sergeant, by his will dated June 22, 1846, directed his trustees to invest certain moneys, and to pay the income to his wife for life, and after her death to divide two-thirds of the principal "equally among the surviving unmarried daughters" of three of his wife's sisters, whom he named. The testator died a few days afterwards, and his wife lived until July 20, 1883. At the time of her death there were living four daughters of her three sisters mentioned in her husband's will. The two first were not married at the death of their uncle, the testator, but were married, with husbands alive, at the death of their aunt. The next, Mrs. Walley, was not married at the death of her uncle, but before her aunt died had married and become a widow, and the remaining daughter had never been married at all. The history of the family, in fact, seems to have been arranged with a view to ring the changes on the several meanings of the word "unmarried." The first two ladies, of course, could not take any benefit unless the description referred to the time of the testator's death, at which time they were "unmarried" in both senses, although at the time of their aunt's death they were not "unmarried" in any sense, including the unconventional sense alluded to at the outset. So little hopes had they of persuading the judge that the testator referred to that period of time that they were not represented by counsel, and gave up their chance. The last of the daughters mentioned, who had never been married at all, did appear by counsel, who, of course, was "not heard," as his client answered all the possible meanings of the word, and was unmarried in both senses both at the death of her uncle and the death of her aunt. There remained the lady who had married and become a widow between the deaths of her uncle and her aunt. This lady was, of course, unmarried at the uncle's death, and her counsel suggested that this fact was enough. This, however, could hardly be, as "surviving" evidently meant surviving the aunt. He, therefore, fell back on the contention that "unmarried" meant not never having been married, but without a husband. This view also Mr. Justice Pearson was unable to take. In a colorless will, said the learned judge, the word meant never having been married, although in certain cases the court had, in order to prevent the intention of the testator being defeated, interpreted it to mean without a husband. He was unable, however, to see that it meant without a husband in this instance, and he added: "The reason why the unmarried daughters are selected and the married daughters left out, I think, is that when a lady who is a spinster marries, some provision is usually made for her either by her own relatives or by her husband." In other words, the testator meant to confine his bequest to nieces who had never been advanced to matrimony at all, which was probably his intention, and, undoubtedly, in accordance with the conventional meaning of the word.

The advice deducible from the case to draftsmen about to use the word "unmarried," is not to use it at all. The word is indefensible etymologically and obscure even in its vulgar use. But what is the draftsman to use in its place? Those who are careless of style use the periphrasis "not having married," which is clear but clumsy. There seems no reason that the good old English word "spinster" should not be used, being as it is the legal title of a person who is neither wife nor widow. If the testator's will had run "equally among the surviving spinster daughters of my sister-in-law," it could not have been suggested that widowed daughters were included. The past participle of the English language must, however, if used like an adjective, always lead to obscurity, and to use it with a negative prefix intended to have the effect of "not" simply is to be guilty of a solecism as well.—*Law Journal.*

THE case of Read v. Anderson is thus commented on in the current number of the *Law Quarterly Review:*

It takes some boldness to qestion a judgment of Mr. Justice Hawkins on a matter connected with horse races, and a judgment of Lord Justice Bowen (approved as it is by Lord Justice Fry) on the principles of the law of agency. Is it, however, at all certain that the decision of the court of appeals in Read v. Anderson (13 Q. B. D., C. A., 779) can be supported?

Stripped of its details, the case is simple enough. X employs A to make bets for X in A's name, and impliedly agrees to repay A for bets made and paid on X's behalf. A, acting on X's instruction, bets with M on a horse race and loses the bet; before the bet is paid, but after it is lost X revokes A's authority to pay it; A pays the money and thereupon sues X for the amount. It is ad-

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mitted, on the one hand, that M could not, by any legal process, have recovered the amount of the bet from either A or X, and, on the other hand, that if A had not paid the bet he would have suffered in his business and reputation as a betting agent.

The majority of the court of appeals hold that, under these circumstances, A exposed himself to a liability in respect of which X, as his employer, was bound to hold him harmless, and that, therefore, X was not entitled to revoke the authority given to A, and A was entitled to recover the amount of the bet paid from X. The master of the rolls, on the other hand, holds that A's business, though it may not be illegal, is directly objected to by the law, and the contracts made by him in his business cannot be enforced; it is a business of which the law ought not to take notice, and, therefore, the inconvenience and the loss which the plaintiff may suffer in his objectionable business form no ground for an action for revoking the authority which the principal ought not to have given. We venture to think that the doctrine of the master of the rolls will commend itself to lawyers. If the law recognizes liabilities which cannot be legally enforced results may follow which are as important in practice as they are curious in theory.

The Law of Nations.

At the period—which is apparently likely to be a very remote one—when the military operations now being conducted by the French in China are brought to a close, a brilliant opportunity will be afforded for an international jurist to bring out a new text-book on the Law of Nations. For it is certain that, if the recent action of France and China, and, indeed, England also, is to be recognized as a guide for the future, all the old precedents ought to be formally overruled. Without declaring war against China, France has asserted the right of establishing a strict blockade of the Island of Formosa, and of searching neutral vessels for contraband of war. Without waiting for a declaration of of war by either France or China, England has put in force her Foreign Enlistment Act, and has forbidden to allow the French Admiral any longer to use Hong Kong as a coaling station. No doubt it would have been grossly unfair to have gone on permitting its use for that purpose while the blockade of Formosa was respected. But, as the matter stands, our assent to one act on the part of France, which was altogether in antagonism to international law, has forced us to commit another breach of law ourselves. "Thus bad begins and worse remains behind."—*Pump Court.*

IN MERCHANTS' Nat. Bank v. Hanson (21 Northw. Rep., 849) the Supreme Court of Minnesota fall in line with the Supreme Court of the United States on the rule as to recovery by national banks on negotiable paper—in holding that the enforcement in favor of a bank, of securities upon real property, which securities the bank had acquired without authority, cannot be opposed by the plea of *ultra vires*, but that it was intended by Congress that the consequences of such violations of law should be only such as might be imposed in proceedings instituted by the bank against the government.

In same case they held that mere negligence of an indorser of negotiable paper respecting infirmities in the paper, or in the title to it, will not affect his rights unless he is chargeable with *mala fides*. It appeared that L., holding certain promissory notes payable to his own order, transferred them to the plaintiff for value. The plaintiff afterwards returned them to L. for collection, having made upon them endorsements directing payment to be made to L., or order, for collection on the plaintiff's account. L., receiving the notes for collection, endorsed them to defendant before maturity, for value (in payment of a precedent debt of his own). The defendant noticed the endorsements, which remained uncancelled when he purchased the notes, but made no inquiry, and no facts were communicated to him, except such as were implied from the endorsements. Held, that the endorsements were effectual as notice of the plaintiff's title, and that the purchase of the notes by the defendant, without inquiry, was, in the absence of any explanation, conclusive proof of *mala fides*.

The Court say the defendant's purpose in acquiring the notes from L. was, of course, to make collection from the maker for his own benefit. Having express notice by the endorsements that L. probably did not own the property, but that this plaintiff was the owner, he could not wilfully disregard the apparent rights of the plaintiff, and by carefully abstaining from such inquiry as the circumstaces suggested, assert the right to defeat plaintiff's title under the claim of being an endorsee in good faith. His conduct in disregarding the notice, and forbearing to make enquiries, is inexplicable except upon the assumption that he was regardless of the plaintiff's apparent rights, and wilfully abstained from enquiry lest it should confirm the fact of which the endorsements notified him, and he should thus be unable to acquire the notes that he might protect himself against the plaintiff's superior right. This was not

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merely negligence concerning his own interests or the rights of others, but *mala fides*. The proof of *mala fides* resting in the circumstances detailed, is unopposed by any fact going to support a contrary conclusion, and the court did not err in determining the matter as a conclusion of the law. Citing James v. Gordon, L. R., 2 App. Cas., 616: National Security Bank v. McDonald, 127 Mass., 82; National Bank of Com. v. Law, 127 Mass., 72; Fowler v. Brantly, 14 Pet., 318.

Supreme Judicial Court of Massachusetts.

AMASA P. JOHNSON ET AL. *vs.* JOHN H. WILKINSON.

Oral Contract to use a Hall, simply a License, not a Sale of an Interest of Land and within the Statute of Frauds.

Opinion by MORTON, C. J. February, 1885.

There was evidence tending to show that the defendant, who was the owner of a hall, entered into an oral agreement with the plaintiff, by which he agreed to permit the plaintiff to use the hall for dancing parties on the afternoons of four holidays—Thanksgiving, Christmas, Washington's Birthday and Fast Day—at a stipulated price for each afternoon. The Superior Court directed a verdict for the defendant, upon the ground that this contract was within the Statute of Frauds, being a contract for the sale of an interest in land. The question is, whether it was such a contract, or merely a contract for a license to the plaintiff to enter and use the hall for the purpose contemplated. A license is a permission or authority to enter the land, and do certain acts or series of acts, the parties not intending to convey any interest in the land; and it is well settled that such a license need not be in writing, under the Statute of Frauds. Thus, a license to enter land and to cut timber, or to gather the growing crops, is valid, though not in writing. Whitmarsh v. Walker, 1 Met., 313. So an agreement for a seat in a theatre or other place of amusement is a license merely. McCrea v. Marsh, 12 Gray, 211; Burton v. Scherpf, 1 Allen, 133. So, ordinarily, an agreement for lodgings in a hotel or boarding-house, though the rooms the boarder is to occupy are designated, does not create an interest in lands, but is merely a license. White v. Maynard, 111 Mass., 250.

In the case before us, it seems to us that the contract has the elements of a license rather than of a contract for the sale of any interest in land. The use of the hall by the plaintiff was not to be continuous, but only occasional, and for a few hours on four separate days. He was not to have the exclusive occupation and control of it. The key was never delivered to him, but remained with the defendant, who, on the afternoons it was occupied under the contract, opened, lighted and closed it. We think the defendant would remain all the time in the legal possession of the land; that the plaintiff was to occupy it merely as licensee, and would acquire under the contract no interest in the land. It is like the ordinary case of hiring a hall for a night, which does not create a lease, but the person who hires, occupies under a license.

Regarding the contract in this case as a contract for a license, it is true that the defendant had the power to revoke the license; and the plaintiff could not compel the defendant to give him the use of the hall. But if, in revoking it, the defendant violated his contract, he is responsible for any damages sustained by the plaintiff by reason of such breach of contract. McCrea v. Marsh, *ubi supra;* Whitmarsh v. Walker, *ubi supra.*

Judgment for the plaintiff.

A CURIOUS exception to the generally controlling principle that a will is to be construed according to the intention of the testator, is afforded by the recent English case of Portal to Lamb (Ct. of App., Chan. Div., August, 1884; 51 Law Times R., N. S., 392), where the testator gave a specified cottage, "and all my land at Stour Wood," on condition that it be "preserved in its *present* condition."

Subsequently, to making this will he contracted for the purchase of more land at the same place.

The question was whether this additional land, which could not have been contemplated by him at the time of making the will, and in respect to which, indeed, the clause as to preservation of condition could not have been by him thought to be applicable, would pass by this specific devise or whether it went under a residuary devise to other persons.

The court held that, by the force of the English statute, declaring every will to be construed as speaking and taking effect as if executed immediately before the testator's death, unless a contrary intention appear by the will, the after acquired property must be deemed to pass by the specific devise.

The court say that, under the statute, the will must show upon the face of it an intention that the after acquired property should not pass in order to prevent that effect; and further, they intimate that the clause as to keeping the property in its present condition must be read as if it had been written immediately before the testator's death.—*N. Y. Daily Register.*

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NOTES OF RECENT DECISIONS.

Negligence: Joint Liability; Driver and Owner of Team; Partnership.—Defendant and one McC. entered into an agreement by which the former agreed to furnish team and wagon, for the purpose of carrying passengers, the latter was to gather the passengers, collect the fares and the avails of the business as such was to be divided between them. Plaintiff, while walking in a pul lic street, was knocked down and run over by the team and wagon furnished by defendant under the agreement. Through the negligence of the driver the accident happened. Defendant was not present. In an action to recover damages, *held*, that as to third parties, each of the parties to the agreement became the agent of the other in the prosecution of a common enterprise and so liable for the other's negligence in relation thereto, and that defendant was liable. It is clear that there was a contract relation between the two defendants. They undertook to engage together in a money-making occupation, to which one contributed as capital the horses, harness and wagon, and food and care for the team, and the other his personal services. The reward of each was to be derived from the avails of the business as such, and not by way of compensation either for services or use of property. As to third persons therefore, within rules too well settled to permit discussion, each became the agent of the other in the prosecution of the common enterprise, and liable for his omissions and faults in regard thereto. [Champion v. Bostwick, 18 Wend., 175; Leggett v. Hyde, 58 N. Y., 272; 17 Am. Rep., 244; Roberts v. John son, 58 N. Y., 613; Strober v. Elting, N. Y. C. A.]

Pleading: Contributory Negligence.—It is well settled that a complaint for the recovery of damages resulting from the loss of property, caused by negligence in suffering fire to escape from railroad locomotives and communicating to adjoining property, must show, either by direct averment or by the facts stated, that the negligence of the plaintiff did not contribute to the injury. It is not enough to show that the defendant was negligent. It must also be made to appear that the plaintiff was without fault. (Louisville, &c., Ry. Co. v. Lockridge, 93 Ind., 191; Pennsylvania Co. v. Gallentine, 77 Ind., 322; Wilson v. Trafalgar, &c., G. R. Co., 83 Ind., 326.) It is incumbent upon the plaintiff, in all actions of this character, to show, in accordance with the rules of pleading, that he was free from fault contributing to the injury. He must do more than show that in one particular he was without fault. Facts, and not evidence, must be directly pleaded, and not stated by way of recital. (Jackson School Twp. v. Farlow, 75 Ind., 118.) There is an essential and important difference between the statement of a fact and the rehearsal of evidence. It is inherent and not merely artificial. [Wabash, St. Louis & Pacific R. R. Co. v. Johnson. Opinion by Elliott, C. J. See also opinion by Colerick, C., in other case between same parties. 96 Ind. Rep.]

Partnerships; Rights of Partners.—A father who had been conducting a prosperous business in his own name, his sons working for him on a salary, added to the business name of the concern the words, "and sons," and under the altered name suits were instituted, accounts made out, receipts executed, and, in fact, all the business of the concern conducted: the sons were not, as theretofore, credited by any amount as salary, but each was simply charged with what he took from the firm businesss, and the father stated to outsiders that his sons were partners with him in the business. In a contest between the father and sons, it is held that the sons are entitled to share in the profits, after paying to the father interest upon his capital invested. That there were no definite terms as to the interest of each in the partnership, or as to its duration, is not sufficient to overcome the testimony sustaining the claim of the sons. [Reed v. Reed, &c. Jan. 15, 1885. Kenton Ch. Ct. Opinion by Pryor, J., Ct. Ap., aff.]

Banker's Draft: Insolvency of Drawer. Right to Payment in Full.—A banker's draft drawn and payable within the country is not in legal effect a check, and where, before presentation to the bank on which it is drawn, that has funds to meet its payment, the drawer fails and payment is refused on that account by the drawee, and the funds paid over to the receiver of the drawer, the payee is not entitled to payment in full out of such funds, but must prorate with the other creditor. [Grammel v. Carmer, S. C. Mich.; 21 N. W. Rep., 418.]

Credibility of Witnesses; Falsus in uno, Falsus in Omnibus.—Where a witness falsifies a fact in respect to which he cannot be presumed liable to mistake, courts are bound, upon principles of law, morality and justice, to apply the maxim, *falsus in uno, falsus in omnibus.* [Am. Bell Telephone Co. v. People's Telephone Co. U. S. Cir. Ct., N. Y., S. D. Dec. 1, 1884. 22 Fed. Rep., 309.]

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Contributory Negligence: Walking on Railroad Track.—While a railroad company is held to the highest degree of care in operating its road, and is liable for all injuries that result solely from a failure to exercise such care. persons who take the risk and perils of travelling upon railway tracks, and are thus brought into dangerous positions, voluntarily assumed, are not free from fault, and if injury results therefrom, the railroad company is not liable. [U. S. C. C., Dist. of Minn. Gretchen, Adm'r, v. Chicago, Milwaukee & St. Paul Ry. Co. Opinion by Nelson, J. 22 Fed. Rep., 609.]

Husband and Wife; Action for Necessaries.—When a wife leaves her husband without justifiable cause, retaining the custody of their child, and said husband is ready and willing to furnish the child with a suitable home, and notifies his wife and a third person, who furnishes necessaries to the child on his account to this effect, he is not liable to said third person in an action for such necessaries, even though he takes no steps toward procuring the custody of the child. [Sup. Ct. of Illinois. Baldwin v. Foster. Opinion by Holmes, J. 17 Chicago Legal News, 211.]

Contempt: Proceedings in aid of Execution; Refusal to pay Money; Imprisonment Illegal.—A had in his possession money which he claimed as a gift from B, who was a judgment debtor of C. In proceedings prosecuted by C before the probate judge in aid of execution, the judge found that the money had been placed in the hands of A by B to defraud his creditors, and the judge ordered A to deliver the money to a receiver then appointed by him, to be applied on the judgment, but A refused to comply with the order. *Held*, That the probate judge had no power to imprison A for a contempt, but the receiver must resort to his remedy by action against A. [White v. Gates, S. C. Ohio.]

Insolvency: Husband and Wife; Preference.—When a husband is honestly indebted to his wife and to other persons, he may lawfully confess a judgment in her favor, the effect of which will be to secure her in preference to his other creditors. (Wingerd v. Fallow, 14 Norris, 184.) An execution thereon may issue against him without his consent, in the name of his wife. For an honest purpose, and to secure or pay a just debt due by him to his wife, he may make a valid sale or transfer of his real estate to her, with like effect as to any other of his creditors. Such conveyances, however, should be carefully scrutinized, and the indebtedness be clearly established. [Benson v. Maxwell; Sup. Ct. of Penn.]

The Courts.

U. S. Supreme Court Proceedings.

MARCH 30, 1885.

W. L. McGary, Washington, D. C.; Charles Chaille Long, New York city, have been admitted to practice.

No. 178. James Sargeant v. The Hall Safe and Lock Company et al.; decree affirmed with costs. Opinion by Mr. Justice Blatchford.

Nos 89 and 190. Edward G. Thompson, trustee, etc., et al., v. Elizabeth E. Boisselier et al.; decrees affirmed with costs. Opinion by Mr. Justice Blatchford.

No. 196 The McNab and Harlan Manufacturing Company et al. v. Edward G. Thompson, trustee, etc., et al.; and

No 197. John Eaton et al. v. Edward G. Thompson, trustee, etc., et al.; decrees reversed with costs and causes remanded with directions to dismiss the bills with costs. Opinion by Mr. Justice Blatchford.

No. 200. J. Addison Hayes v. The Mayor, etc., of the city of Holly Springs; judgment affirmed with costs. Opinion by Mr. Justice Blatchford.

No. 206. Daniel Chapman v. Joseph W. Brewer, assignee, etc.; decree affirmed with costs. Opinion by Mr. Justice Blatchford.

No. 61. G. De Rosse tLamar v. Mary J. C. Micon, administratrix; motion for a rehearing denied. Opinion by Mr. Justice Gray.

No. 184. Original. Ex parte in the matter of James S. Wilson, petitioner; petition for writ of habeas corpus granted. Opinion by Mr. Justice Gray.

No. 181. The Electric Railroad Signal Company v. The Hall Railway Signal Company; decree affirmed with costs. Opinion by Mr. Justice Matthews.

No. 1251. The first National Bank of Xenia, O., Daniel M. Stewart et al., administrator, etc.; judgment affirmed with costs and interest. Opinion by Mr. Justice Woods.

No. 112. William S. Thompson et al. v. George H. Wooster; decree affirmed with costs and interest. Opinion by Mr. Justice Bradley.

No. 895. The United States v. David W. Minor; decree reversed and cause remanded for further proceedings to be had therein not insousistent with the opinion of this court. Opinion by Mr. Justice Miller.

No. 923. The Detroit City Railway Company v. Jacob Gutha.d; dismissed for the want of jurisdiction. Opinion by Mr. Chief Justice Waite.

No. 1044. Benjamin Butterworth, Commissioner of Patents, v. Samuel Hill et al.; decree reversed with costs and cause remanded with directions to dismiss the bill for want of jurisdiction without prejudice. Opinion by Mr. Chief Justice Waite.

No. 199. The Farmington Village Corporation v. Eben F. Pillsbury; judgment reversed with cost and cause remanded with directions to dismiss the suit for want of jurisdiction without prejudice. Opinion by Mr. Chief Justice Waite.

No. 1110. The Kehlor Milling Company v. The John T. Noye Manufacturing Company; motion to dismiss or affirm denied. Announced by Mr. Chief Justice Waite.

No. 372. B. W. Mower v. Nathan Fletcher et al.

No. 373. B. W. Mower v. Nathan Fletcher et

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al.; motion to dismiss denied. Opinion by Mr. Chief Justice Waite.

No. 1067. John R. Elder v. Emma W. Ulman; motion for further security on supersedeas bond granted. Announced by Mr. Chief Justice Waite.

IN EQUITY.—New Suits.

March 26, 1885.

9373. Daisy Casparis v. John Hilz et al. Judg't creditor's bill. Com. sol., E Totten

9374. Wm E. Clark v. Margaret Krause et al Judgment creditor,s bill. Com. sols., Edwards & Barnard.

March 28, 1885.

9375. Eliza C. Berry et al. v. Lewis C. Kennedy et al. Partition. Com. sol, W. P. Bell.

March 30, 1885.

9376. George I, Hill v. James P. Herron et al To sell. Com. sol., J. H. Smith.

9377. E. Francis Riggs et al. v. Lawrason Riggs et al To sell. Com. sols., Hanna & Johnston.

9378 John A. Loudon v. Wm. G. Flood et al. To establish trust. Com. sol., I. Williamson.

March 31, 1885

9379. Eugene D. Hays v. Annie Hays. For divorce. Com. sol., A. A. Lipscomb.

April 2, 1885.

9380. Wm. R. Speiden v. Diller B. Groff et al. To enforce mechanics' lien. Com. sol., V. B. Edwards

April 3, 1885.

9381. Sarah C. Palmer v. Lillian M Palmer et al. Partition. Com sol., same.

9382. Louis Watkins v Anna E. Thompson et al. To appoint a new trustee. Com. sol., W J. Miller.

CIRCUIT COURT.—New Suits at Law.

March 26, 1885.

26051. The U. S v. Wm. T. Barnard et al. Bond, $25,000. Piffs. atty., A. S. Worthington.

26052. Same v. Reginald Fendall, adm'r. Bond, $25 000. Piffs. atty., same.

March 27, 1885.

26053. Lizzie Cameron v. Ethel Moore. Acct, $346. Piffs. atty., H. B. Moulton.

26054. Ebenezer Morrison v. N W. Fitzgerald. Notes and acct., $593 88. Piffs. atty., D. O'C. Callaghan.

26055. Charles H. Horton v. The Supreme Sitting of the order of the Iron Hall. Damages, $20,000. Piffs. attys, Newton & Berryman.

26056 Chester Bradford v. Same. Acct., $68.32. Piffs. attys., same.

March 28, 1885.

26057. Beckham & Middleton v. Clement W. Bennett. Appeal. Piffs. atty., C. M. Matthews

26058. Robert Morrison, trustee, v. Lucy G. Prindle Ejectment. Piffs. attys., Hildebrandt, Morrison & Hildebrandt, and W. O. Stone.

26059. Same v. James H. McGill. Ejectment. Piffs. attys. same.

26060. Sama v. Morill Mareau. Ejectment. Piffs attys. same.

26061. Same v. Dwight M. Sabin. Ejectment. Piffs. attorneys, same.

26062. Walter Brown v. Edward Fick. Notes and acct, $244 81. Piffs. atty., H. B Moulton.

March 30, 1885.

26063. Elizabeth A. Willett v. Wm. Leonard et al. Note, $714. Piffs. atty., C. Storrs.

26064. Thomas Green, Ex'r, v. John McDonnell. Certiorari. Piffs. atty., A. S. Taylor.

March 31, 1885.

26065. Thomas A. Sorrel v. Wm. G. Taliaferro Replevin. Piffs. atty. W. T. Bailey.

April 1, 1885.

26066. John Willis v. Butler Mahone. Damages, $2000 Piffs. atty., John I. Joyce.

26067. Brimmer & Lehman v. Clayton McMichael. Replevin. Piffs attys., Edwards & Barnard.

26068. C. T. Wood & Co. v. Owen G. Staples Acct., $662.94. Piffs. attys., same.

April 2, 1885.

26069. Harriet McC—— v. Edward Fick et al Acct., rent. Piffs. atty., R. R. Perry.

April 3, 1885.

26070. Wm. L. Bramhall et al. v. Martin Keefe. Ejectment. Piffs. atty., W. Willoughby. Defts. atty., J. G. Bigelow.

PROBATE COURT.—Justice James.

April 4, 1885.

Estate of Wm Thompson. Petition for letters of administration filed by Elizabeth A Bell.

Estate of Eliza Young; will admitted to probate and Josephine and Rebecca E. Young appointed executrices on bond of $8,000.

Estate of John O. Burch; order authorizing sale at auction of inventoried property.

Estate of Delos B. Sackett; inventory and report of administator filed.

Estate of Ellen S Crooks; will admitted to probate and C. Banks Brookes and C. F. Benjamin appointed executors on bond of $3,000

Estate of Mary E. Maroney; receipts of heirs filed.

Estate of Daniel G. Noble: widow appointed admin'x.

Estate of Samuel A Appole; petition of Elizabeth M. Appold for letters of administration filed

Estate of Wiley Lane; James M. Gregory app't'd adm'r.

In re guardianship of Wm. and Harry L James; Albert F Fox appointed guardian.

Estate of August Dohrer; petition of Henry Luckel and Henry Koch for letters testamenry filed

Estate of Henry Addison; petition of C. E. Creecy for letters of administration filed.

Estate of Wm H. Marders; petition of Alice J. McCauley for letters of administration filed.

Estate of Francis Straub; Francis Miller appoint adm'r.

Estate of J C. Johnson; Robert Johnson appointed adm'r.

Estate of John A. W. Clarvoe; Martha M. Clarvoe appointed administratrix.

Estate of B F. Barker; Wm F. Barker appointed adm'r.

Estate of Chas. A. Ashton; Matilda Robinson appointed administratrix.

Estate of Alexander Hough; Victoria H. Hough appointed administratrix.

Estate of Carlisle F. Crump; Sarah F. Crump appointed administratrix

Estate of George W. Frazier; Margaret A Frazier appointed administratrix.

Estate of Charles D. Gilmore; inventory of personal property filed.

In re guardianship of Anna and Mary Bell; petition of guardian for maintenance filed.

Estate of Wm. H. Ourand: answer of widow to petition filed.

Estate of Charles H. Hospital; petition of Joseph A. Gamble for letters of administration filed.

Estate of E. B. Hickman; objection of widow to administrator filed

Estate of Joseph O Wallingford; E E. Wallingford appointed administrator.

Estate of Charle D. Gilmore; sale of personal property ordered.

Estate of Carlisle F Crump: consent of of Jenny King to granting of letters of administration filed.

Estate of Edward Blenitt; consent of Catharine McFarland to issuance of letters of administration filed

Estate of Z H Whittemore; consent of Francis M Paret to issuance of letters of administration filed

Estate of of Moses Meredith; Mary E. Meredith appointed administratrix.

Estate of Jane Rutledge; rule to show cause on petition of Jacob Kerr.

Legal Notices.

THIS IS TO GIVE NOTICE,

That the subscriber, of Washington City hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration on the personal estate of John Ashley, late of Staunton Station, Tenn., deceased

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of February, 1885

PHILIP H, SHERIDAN.

LINDEN KENT, Solicitor. 14

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, March 20, 1885.

In the matter of the Estate of Laura O. Taylor, late of the District of Columbia deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Joseph F. Hodgson

All persons interested are hereby notified to appear in this court on Friday the 10th day of April next at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test 12 H. J. RAMSDELL, Register of Wills.

O T. THOMPSON, Solicitor.

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Legal Notices.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of George V. Bassett, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of March next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 24th day of March, 1885.
FANNIE C. BASSETT.
HANNA & JOHNSTON, Solicitors. 14 Adm'x c. t. a.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Hattie H. Morse, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of January next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 26th day of January, 1885.
THOS. E. WAGGAMAN,
ALEX. PORTER MORSE, Sol'r 14 Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the day of April, 1885.

LORIN BLODGETT and ROBERT MORRISON, TRUSTEES, v. U. S. GRANT ET AL	No. 8270. Eq. Doc.

On motion of the plaintiffs, by Mr. T. Q. Hildebrandt, their solicitor, it is ordered that the defendants, The Washington Association and United States Insurance Company, a corporation, and the unknown heirs of Elias B. Caldwell, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.
By the Court. CHARLES P. JAMES, Justice.
True copy. Test: 14 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Hannah Adler, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 4th day of April, 1885.
HENRY ADLER,
SIMON WOLF Solicitor. 14 Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. April 4, 1885.
In the matter of the Estate of William H. Marders.
Application for Letters of Administration on the estate of William H. Marders, late of the Police Force of the District of Columbia, has this day been made by Alice J. McCauley.
All persons interested are hereby notified to appear in this court on Friday, the 24th day of April next at 11 o'clock, a. m. to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. CHARLES P. JAMES, Justice.
Test 14 H. J. RAMSDELL, Register of Wills.
V. B. EDWARDS, Solicitor.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Sabra P. Aqell, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of March next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 28th day of March, 1885.
14 CHARLES R. ABELL.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA Holding a Special Term for Orphans Court Business. April 4th, 1885.
In the matter of the estate of Henry Addison, late of the Police Force of the District of Columbia deceased.
Application for Letters of Administration on the estate of the said deceased has this day been made by Charles E. Creecy.
All persons interested are hereby notified to appear in this court on Friday, the 24th day of April next at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. CHARLES P. JAMES, Justice.
Test 14 H. J. RAMSDELL, Register of Wills.
V. B. EDWARDS, Solicitor.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration on the personal estate of Isadora C. Causten, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of March, next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 31st day of March, 1885.
WALTER KER,
JAMES H. TAYLOR, Solicitor. 14 Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 20th day of February, 1885.

HENRY CLARKE ET UX., Complainants, v. HENRY HOHMAN ET AL., Defendants.	No. 9338. Eq. Doc. 24.

On motion of the plaintiffs, by Messrs. Hagner & Maddox their solicitors, it is ordered that the defendants, Henry Hohman, and Louise Hohman, his wife, Amelia H. Perry, widow of Anson C. Perry; Leonard Perry, Rachel Rynders, sometimes called Rachel Reynolds, and William Rynders, her husband, Annetta Rynders, sometimes called Annetta Reynolds, and Hiram Rynders, her husband, Elizabeth A. Lent, and Benoni S. Lent, her husband, Elizabeth Atwell, and John Atwell, her husband, and Rossetta Hibbard, defendants, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.
By the Court. A. B. HAGNER, Justice.
A true copy. Test: 14 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.
That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of George W. Rice, late of the U. S. Army, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 30th day of March next; they may otherwise by law be excluded from all benefit of the said estate.
Given under our hands this 30th day of March, 1885.
D. L. BRAINARD,
14 M. P. RICE,
Executors.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration on the personal estate of John O. Birch, late of the District of Columbia deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of March next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 27th day of March, 1885.
GEORGE W. HARVEY,
GEO. F. APPLEBY, Solicitor. 13 Administrator.

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Legal Notices.

THIS IS TO GIVE NOTICE,

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of James D. Clary, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23d day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23d day of March, 1885.

WILLIAM E. EDMONSTON,
13 Executor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Delos B Sacket, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of March, 1885.

FRANCES ANN SACKET,
GEO. F. APPLEBY, Solicitor. 13 Administratrix.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 20, 1885.

In the matter of the Estate of Bushrod M. Reed dec'd.

Application for Letters of Administration on the estate of Bushrod M. Reed, late of the District of Columbia, has this day been made by Annie L. Reed.

All persons interested are hereby notified to appear in this court on Friday, the 10th day of April next, at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 13 H. J. RAMSDELL, Register of Wills.
A. WEBSTER, Solicitor,

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 23d day of March, 1885.

JOHN O'DEA
v.
ELIZABETH FREY, formerly ELIZABETH MORAN. } No. 26011.

On motion of the complainant, by Mr. E F Arnold, his attorney, it is ordered that the defendant, Elizabeth Frey formerly Elizabeth Moran, cause her appearance to be entered herein on or before the first rule day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice
True copy. Test: 13 R J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

ABRAHAM KENDICK ET AL.
v.
BENJAMIN F. KENDICK ET AL. } No. 9247. Equity. Doc 24.

Benjamin F. Leighton, trustee, in the above-entitled cause, having reported a sale of the lot and premises described in the bill and proceedings, herein to T. A King for the sum of $1100, cash It is this twenty fifth day of March A. D. 1885, ordered that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 27th day of April next. Provided, a copy of this order be published in the Washington Law Reporter, once a week for three consecutive weeks prior to that day.

By the Court. W. S. COX, Justice
A true copy. Test: 13 R J. MEIGS, Clerk

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 17th day of March, 1885.

SARAH HELEN E. RYAN
v.
EDMUND T. RYAN. } No. 9358.

On motion of the plaintiff, by Mr. Merriman, her solicitor, it is ordered that the defendant, Edmund T Ryan, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
True copy. Test: 12 R. J. MEIGS, Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 20th, 1885.

In the matter of the estate of Samuel S. Shaffer, late of the Police Force of the District of Columbia deceased

Application for Letters of Administration on the Estate of the said deceased has this day been made by Charles E. Creecy.

All persons interested are hereby notified to appear in this court on Friday, the 10th day of April, next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

By the Court. A. B. HAGNER, Justice.
Test: H. J. RAMSDELL, Register of Wills.
V B EDWARDS, Solicitor. 12

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business. March 20th, 1885

In the matter of the Estate of Laurence Rossiter, late of the Police Force of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Charles E. Creecy.

All persons interested are hereby notified to appear in this Court on Friday, the 10th day of April next, at 11 o'clock, a m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B HAGNER, Justice.
Test: H J RAMSDELL, Register of Wills.
V B EDWARDS Solicitor. 12

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 20, 1885.

In the matter of the Estate of Benjamin Ross, late of the Police Force of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Charles E. Creecy.

All persons interested are hereby notified to appear in this court on Friday the 10th day of April next at 11 o'clock a. m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test 12 H J RAMSDELL, Register of Wills
V B EDWARDS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 20th, 1885.

In the matter of the Estate of James B. O'Brien, late of the Police Force of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Charles E Creecy.

All persons interested are hereby notified to appear in this court on Friday, the 10th day of April next at 11 o'clock, a. m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test 12 H J RAMSDELL, Register of Wills

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, March 20th, 1885

In the matter of the Estate of Henry Nash, late of the Police Force of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Charles E Creecy.

All persons interested are hereby notified to appear in this court on Friday, the 10th day of April next at 11 o'clock, a m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 12 H. J. RAMSDELL Register of Wills
V. B. EDWARDS, Solicitor.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 27. 1885

In the matter of the Will of Edward M. Spedden, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Isaac L. Johnson

All persons interested are hereby notified to appear in this Court on Friday, the 17th day of April next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

By the Court. A B HAGNER. Justice.
Test: 13 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business March 27, 1885.

In the matter of the Estate of John Minor, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Alice Alena Smith and James F. Jackson

All persons interested are hereby notified to appear in this court on Friday the 17th day of April next at 12 o'clock, m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test; 13 H. J. RAMSDELL Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Holding a Special Term for Orphans' Court Business. March 27, 1885.

In the case of John E. Latimer, Administrator of John P. Butler, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday the 17th day of April, A. D 1885, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test 13 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business March 27th, 1885.

In the matter of the Estate of Benjamin K. Morsell, late of the Police Force of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Charles E. Creecy

All persons interested are hereby notified to appear in this Court on Friday, the 17th day of April next at 11 o'clock, a. m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B HAGNER, Justice.
Test: H. J. RAMSDELL, Register of Wills.
V. B. EDWARDS, Solicitor. 13

THIS IS TO GIVE NOTICE:

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Egbert L. Weaver, late of the District of Columbia, deceased

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of March, 1885.

EFFIE C. WEAVER.
E. B. HAY, Solicitor. 13 Administratrix.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business March 27th, 1885.

In the matter of the Estate of Jenkin Thomas, late of Georgetown, D. C., deceased

Application for Letters of Administration c. t. a. on the Estate of the said deceased has this day been made by Wm. Riley Deeble (upon petition of said Deeble and Ellen E. Bangs.

All persons interested are hereby notified to appear in this court on Friday the 17th day of April next at 11 o'clock, a. m, to show cause why the said Letters of Administration c. t. a. on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day,

By the Court. A. B. HAGNER. Justice.
Test: 13 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 27th, 1885.

In the matter of the Estate of Henry A. Garrett, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased, has this day been made by Laura V. Mothersed.

All persons interested are hereby notified to appear in this court on Friday, the 17th day of April, next, at 11 o'clock m., to show cause why Letters of Administration on the estate of said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 13 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 27th, 1885.

In the matter of the Estate of Langley B. Culley, late of Baltimore, Md., deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Charles Allen, a creditor.

All persons interested are hereby notified to appear in this court on Friday, the 17th day of April next at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

By the Court. A B. HAGNER. Justice.
Test: 13 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 27, 1885.

In the matter of the Will of Catharine Hill, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Joseph F. Hodgson.

All persons interested are hereby notified to appear in this court on Friday the 17th day of April next at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test 13 H. J. RAMSDELL, Register of Wills.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of administration c. t. a. on the personal estate of David C Ralston late of the U S. Army, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 16th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of March, 1885.

ANDREW A. LIPSCOMB,
13 Administrator c. t. a.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, March 20th, 1885.

In the matter of the Estate of Lafayette Jacobs, late of the Police Force of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Charles E Creecy.

All persons interested are hereby notified to appear in this court on Friday, the 10th day of April next at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 12 H. J. RAMSDELL Register of Wills.
V. B. EDWARDS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 27, 1885.

In the matter of the Estate of James L. Gates, late of the Police Force of the District of Columbia, deceased

Application for Letter of Administration on the estate of the said deceased has this day been made by Charles E. Creecy.

All persons interested are hereby notified to appear in this court on Friday the 17th day of April next at 11 o'clock, a m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 13 H J. RAMSDELL, Register of Wills.
V. B. EDWARDS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 27th, 1885.

In the matter of the Estate of Francis Straub, late of the Police Force of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Charles E Creecy.

All persons interested are hereby notified to appear in this court on Friday, the 17th day of April, next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

By the Court. A. B. HAGNER, Justice.
Test: 13 H. J. RAMSDELL, Register of Wills.
V. B EDWARDS, Solicitor. 13

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 20th, 1885.

In the matter of the Estate of Benjamin C. Berry, late of the Police Force of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Charles E Creecy.

All persons interested are hereby notified to appear in this court on Friday, the 10th day of April next at 11 o'clock, a. m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. ALEXANDER B. HAGNER, Justice.
Test: 12 H. J. RAMSDELL, Register of Wills.
V. B. EDWARDS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business. March 20, 1885.

In the case of Allan Rutherford, administrator of Bernard G. Semig, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 10th day of April A. D. 1885, at 11 o'clock, a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test; 12 H. J. RAMSDELL, Register of Wills.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 20, 1885.

In the matter of the Estate of James A. Beattie, late of the Police Force of the District of Columbia deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Charles E. Creecy.

All persons interested are hereby notified to appear in this court on Friday the 10th day of April next at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 12 H J RAMSDELL, Register of Wills
V. B. EDWARDS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 23d day of March, 1885

WHITE, HENTZ & CO
v.
JOHN WEAVER. } No. 25097. At Law. Doc. 30.

On motion of the plaintiffs, by Mr. E. H. Thomas, their attorney, it is ordered that the defendant, John Weaver, cause his appearance to be entered herein on or before the first rule day, occurring forty days after this day; otherwise the cause will be proceeded with as in case of default

By the Court. W. S. COX, Justice.
True Copy Test: 13 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 20th, 1885.

In the matter of the estate of George Gregory, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration c t a. on the Estate of the said deceased has this day been made by Andrew N Medbery, praying that letters issue to George R. Gray.

All persons interested are hereby notified to appear in this court on Friday, the 10th day of April, next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration c t a on the estate of the said deceased should not issue to said George R. Gray as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

By the Court. A. B HAGNER, Justice.
Test: H. J. RAMSDELL, Register of Wills.
O. T. THOMPSON, Solicitor. 13

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business. March 20th, 1885.

In the matter of the Estate of Laura O Taylor, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Georgeanna C Bird.

All persons interested are hereby notified to appear in this Court on Friday, the 3d day of April next, at 11 o'clock, a. m., to show cause why the said will should not be proved and admitted to Probate and Letters Testamentary a m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B HAGNER, Justice.
Test: H. J. RAMSDELL, Register of Wills.
O T. THOMPSON, Solicitor. 13

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 17, 1885.

In the matter of the Will of William H. Winsor, late of the District of Columbia, deceased.

Application for the probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Solomon E. Faunce.

All persons interested are hereby notified to appear in this court on Friday, the 17th day of April next at 11 o'clock, a. m., to show cause why the said will should not be proved and admitted to probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 13 H. J. RAMSDELL, Register of Wills.

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Washington Law Reporter

WASHINGTON - - - - - - - - April 11, 1885.

GEORGE B. CORKHILL - - - EDITOR

IN the case of Kruse v. Chester, Supreme Court of California, January, 1885, it was held that an expert in handwriting must confine himself to facts, and cannot give inferences from facts. Inferences are to be drawn by the court. That the record of a deed is inadmissible in evidence if altered after it was made. The record having been excluded, it is discretionary for the trial court to allow a certified copy of the deed in evidence. This was an appeal from Kern county. The action was ejectment. The contention on appeal appears from the opinion. The record mentioned was the record of one of the deeds of conveyance offered in evidence. In delivering the opinion of the court, Judge Thornton said: "In the examination of one of the witnesses, Fore, called to testify as to the writing in the record, he was asked as to certain letters in the disputed entries. It was contended, on behalf of defendants, that the word following 'section thirty' was 'town.' Plaintiff contended that the word was *four*, and that an attempt had been made to alter the word 'four' into 'town.' There was evidence tending to show that to carry out their purpose to alter the word, 'F' had been changed to 'T,' and the concluding letter 'r' to 'n.' The counsel for defendants put this question to the witness Fore: 'Is it not a fact that the letter 'r,' as it appears in this word to have been changed into an 'n,' is strong evidence that the letter 'F' has been changed by striking out the cross to the letter 'T'? An objection to this question was made by plaintiff, and sustained. To this defendants excepted. We perceive no error in this ruling. The witness was called to testify as to facts, and not inferences from facts. It was the province of the court trying the facts to make all deductions or inferences from the facts in evidence. The court very properly refused to permit the question to be put. The court, after hearing the testimony as to the record, held that it was altered after it was made, and rejected the offer to introduce it. In doing so, the court relied on his inspection of the record, on the fact that the original was not produced (it was lost), and that the person (Blodgett) who made the record was not called as a witness. It is contended that this ruling is erroneous. While the question is not free from difficulty, we cannot say the court erred in its rulings.

After the record had been excluded, the defendants made an offer to show that their counsel and one Chester had examined the record some time before the trial, and had found it, as defendants contended it should be, to wit, 'Section Thirty, Town.' Along with this, it was stated that defendants expected to offer a certified copy of the deed. The court ruled out the offer, on the ground that the testimony should have been offered when the question of the record and its admissibility was under consideration. To this there was an exception taken by defendants. The court, having passed on the admissibility of the record after a full hearing, it was a matter of discretion to allow further evidence in relation to it, and, as we cannot perceive any abuse of discretion in the course taken by the court, we do not feel authorized to disturb its ruling."

IT IS, perhaps, not improper for us to call attention to the opinion of Mr. Justice Wylie, in 1879, as to when a woman attains her majority in this District, as there still seems to be some doubt upon the question among lawyers. In the case in which the opinion was delivered, Mrs. Theodore F. Simpson made application for the removal of her guardian in the probate court, and in her petition set forth the fact of her marriage in the fall preceding, and asked that her guardian be discharged and her account settled. The petition of the guardian, Mrs. Ann Eliza Lamb, represented that by an order of the court of December 19, 1876, she was appointed guardian to Neenah Tipston, her granddaughter, and by marriage Mrs. Simpson; and she also asked for release and the passage of her account. The question as to when a woman attains

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her majority was raised, and Justice Wylie said that the question was raised that, under the Maryland law, a girl attains her majority at eighteen years, and when she marries the guardian must close the account. He decided that a girl must be twenty-one before she attains her majority under the act of Congress of 1846, relating to guardians, and under the act of 1869 (the Married Woman's act) the wife has a separate estate free from her husband's control, and he has no control of the wife's property. In this case the girl's guardian had been appointed, and her estate being separate, the guardian must continue until she arrived at the age of twenty-one. The court denied the petition and ordered the present guardian to be retained and the two petitions dismissed. No appeal was taken, and so the question was decided up to that time and as far as that case goes.

Landlord and Tenant Law

The statute, §§ 687, 688, 689, of the Revised Statutes relating to the District of Columbia, provides that in case of appeal as well as in case of plea of title, the parties shall enter into a recognizance to pay all costs, damages and intervening rent pending trial in the court.

Complaint has been general amongst the lawyers who conduct such cases in the court, that the practice of justices of the peace has been hitherto to send up a bond instead of a recognizance or undertaking as the law directs. But we are glad to learn that Justice Bundy has prepared suitable forms for the recognizances and undertakings proper to be used in such cases and they are now in the printer's hands.

The form of bond now in general use is not in conformity with the statute, and besides it throws upon the successful party the trouble and expense of bringing suit upon the bond, when if a recognizance or undertaking were used, judgment would be entered in the same suit against both principal and sureties. This can now be obviated by using these forms.

WE are in favor of toleration, but it is a very difficult thing to tolerate the intolerant.

Supreme Court District of Columbia

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY

MARTIN KEEFE
vs.
WILLIAM L. BRAMHALL ET AL.

EQUITY. No. 8712.

Decided March 16, 1885.
The CHIEF JUSTICE and Justices WYLIE and JAMES sitting.

1. A tax deed on its face amounts to nothing as proof of title until authority for making the deed is shown.
2. Where one enters claiming under color of title, and by length of adverse possession, gains a good title, he will hold according to the metes and bounds set out in his colorable title, although his actual possession has extended only to a part of the land claimed, and that is the only effect of color of title.
3. But, where the entry in the first instance is that of a mere trespasser, without colorable title, his adverse possession of twenty years gives him title only to the land he has actual possession of.
4. A tax deed void on its face does not even give a color of title.
5. Recording a void tax deed, and paying the taxes on the property, are not acts amounting to adverse possession.
6. The Statute of Limitations, in force in this District, in respect of real property is that of 21 James, chap. 1, section 16, and under it there must be twenty years actual, open, notorious, visible adverse possession against all the world.
7. Equity will never intefere between two claimants to a piece of real estate, for the purpose of quieting title, unless the complainant shows a clear and indisputable title, but will leave him to any other remedy that he may have.
8. Equity will not presume strongly in favor of a tax title. A party who purchases a tax title, purchases with full knowledge that he is running a risk, and he is bound to know whether the tax title is good or not. He buys with his eyes open, and to no person does the rule *caveat emptor* apply more than to such a purchaser.
9. There is no presumption in favor of the validity of a title descended from a deceased ancestor unless the latter died seized of the property.

STATEMENT OF THE CASE.

The plaintiff being in possession filed his bill, September 19, 1883, to quiet title to the west half of lot three in square 780, in the city of Washington. He avers that he acquired title thereto by deed from Wm. B. Todd and wife, of July 8, 1870, and Todd acquired title by deed from Caroline H. Earl, of June 15, 1849, and she took under decree of partition of the estate of James McCormick, jr., of the Baltimore County Court, January term, 1846, and he derived title by deed from the

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corporation of Washington city of May 12, 1841, the property having been sold November 19, 1827, for taxes for the years 1824, 1825 and 1826.

Two of the defendants are sued as trustees, and the others as the alleged heirs of James S. Stephenson, who died in the city of Washington about the year 1811. The bill alleges that the latter defendants claim to have inherited this property, together with a large quantity of other property in the city of Washington, from their said alleged ancestor, Stephenson, and undertook and pretended to convey an undivided half interest in the same to Anna T. Bramhall, wife of defendant Bramhall, by deed of November 23, 1882, the consideration recited being $500. The bill avers that this conveyance was without any consideration, in fact is a fraud, and the property therein conveyed is actually worth many thousand dollars. And that the same defendants conveyed, or pretended to convey, the other half interest in the same property to defendant, William L. Bramhall, by deed of the same date.

That Bramhall and wife, thus possessed of this half lot and some eighteen or nineteen other original lots, all situate in the city of Washington, reconveyed the same to the defendants herein named, the said grantors in the two deeds mentioned, by deed of February 17, 1883; and by deed of same date they, in turn, conveyed to Bramhall and Baker, trustees.

That the title to plaintiff's property is thus clouded by these pretended conveyances, and that defendants refuse to bring an action of ejectment to try their pretended title. The plaintiff, being without any adequate remedy at law, therefore brings his bill in equity to quiet the title to the property in controversy, and asks for judgment against the defendants for damages in the sum of $250.

The defendants answering averred that the title of the plaintiff was founded on a tax title, and was null and void, and the record so showed the same; that the said west half of lot 3, square 780, was not inclosed, nor was any dwelling erected thereon until 1870; they denied that the plaintiff and those under whom he holds have paid taxes thereon for more than fifty years, and have exercised all the rights of property in and to the same against all persons, and particularly against the defendants, as alleged in the bill; that said lot was vacant, unoccupied, uninclosed, and in the possession of no one until 1870, when the plaintiff took possession and erected a humble dwelling thereon; that the other defendants are grandchildren of the said James S. Stephenson, who died about the year 1811, and that they inherited, among certain other lots, the property in question, and they show a regular sequence of conveyances from the original proprietor to their ancestor.

The conveyances to Bramhall and wife, and reconveyance to the defendants, and their conveyance to Bramhall and Baker, trustees, as alleged in the bill, were admitted; but they averred that the conveyances to Bramhall and wife were for a valuable and sufficient consideration, and divested of all fraud, and allege that upon conference with the parties interested the said Mrs. Bramhall reconveyed for a full compensation to be paid, &c.; that the trustees have and possess a fee simple, title in and to the lot mentioned for the purposes of the trust; but, notwithstanding this, the defendant, Bramhall, offered to give the plaintiff a quit claim deed for $100.

Issue was joined, and testimony being taken, the proof showed that the lot was purchased by the plaintiff of William B. Todd, in 1870, when it was a vacant lot; and it appears to have remained a vacant lot, uninclosed, from date of tax sale to date of sale by Todd to plaintiff in 1870, when the plaintiff erected a small dwelling thereon; that this property, with the adjoining lots, was a common, wholly unimproved until the Board of Public Works graded D street. The excavation in front of the lot made, in grading the street, is, or was, about seventeen feet deep. The property, as it stood, cost the plaintiff about $2,500, and was fairly worth $1,500. The taxes were paid up to date, the plaintiff having paid them since his purchase of Todd. The property was assessed since the tax sale or deed in the name of McCormick, Todd and the plaintiff. The defendants since the tax sale have never paid any taxes on the property.

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The tax sale took place in 1827; was for taxes due for the years 1824, 1825 and 1826. The price paid for the whole lot (of which only one-half was in controversy) was $2.83. The tax deed under the sale was not given until about fifteen years afterwards, to wit, May 12, 1841. The bill did not allege that the tax deed was a valid one, but averred "that said tax deed is at all events at least a colorable title, and the complainant and his grantors having claimed thereunder for more than forty years, and having asserted all the while a right of property in the same as against all persons, and particularly as against the defendants, or either of them, and all persons who claim under, by or through them or either of them, he claims an indefeasible estate in and to said lot and premises."

At the hearing in Special Term the court dismissed the bill "without prejudice to either party proceeding at law."

Mr. Justice WYLIE delivered the opinion of the court.

This is a bill to quiet the title to the west half of lot 3 in square 780. The bill was filed the 19th of September, 1883. The plaintiff claimed under a tax title, and some mesne conveyances. The defendants claim under the real title. The property was vested in James S. Stevenson in his lifetime, and he died about the year 1811, seized. The defendants are all heirs at law of James S. Stevenson. It is a claim, then, of the party who holds the tax title under the corporation of Washington against the heirs who hold the real title.

The tax title is briefly this: This piece of property was sold for $1.42, in the year 1827, for taxes due for the years 1824, 1825 and 1826. No tax deed was ever made for this property to the purchaser for thirteen years, and then, in 1841, the tax deed was made in pursuance of the sale which took place in the year 1827, and no possession was taken by the purchaser, or by any person claiming title under this tax sale, until 1870. The tax title had passed by many conveyances through different hands, amongst others William B. Todd, well known in this District as a dealer in tax titles. In 1870 these plaintiffs took possession of the property.

The lot lay out in an unimproved part of the city, and although we have no evidence of the fact, it is very probable, from the lights we have, that the intermediate taxes, after the tax sale in 1827, had been paid by either the original purchaser at the tax sale, or by those who claim under the purchaser. There is no evidence that these heirs ever paid the taxes, which were very small. The bill does not aver that this was a valid tax sale, and there is no proof to establish its validity. But the theory of the bill is that, whether the tax sale was valid or not, the deed under it gave a colorable title. It was necessary, if the plaintiff relied upon the validity of the tax title, that he should show it. A tax deed of itself proves nothing. There are statutes in some States which declare that a deed given by an officer who is authorized to give a tax deed, gives a title *prima facie* good. But we have no such law. In this District, a man who claims under a tax title must show it to be good just as a man who claims under a deed from the marshal cannot make out any title on the face of the deed. The marshal's deed itself gives no title, because the marshal is acting under an authority, and his authority to make a deed must be shown, and to establish that authority it is necessary to give in evidence the judgment and the execution, and show the authority of the marshal to make the deed. So in regard to a public officer who sells property for the non-payment of taxes. His deed, on its face, amounts to nothing. His authority for making the deed must be shown; otherwise it is a void act.

As we have said, the bill does not aver a good tax title. It is merely claimed that it was a colorable title. But a colorable title is generally a void title in itself. A party who claims to enter under color of title, and by length of adverse possession gains a good title, will hold according to the metes and bounds set out in his colorable title, and that is the only effect of his color of title. The entry in the first instance may be that of a mere trespasser, without colorable title, but if he remains in adverse possession twenty years he gains a title—but his title is only for exactly the land that he claims and stands

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upon—that he has actual possession of. But if he had entered under a color of title, and his deed sets out by metes and bounds the property, then his possession of a part of the land would extend in contemplation of law to the whole, if he has possession long enough to give him title to the whole tract.

It is a very liberal concession to the complainant in this case to say that he has a colorable title. For if the face of the tax deed shows that it was absolutely void it does not even give color of title, and in this case there is strictly nothing to show that this tax deed amounts to anything at all. But assuming that the complainant has a color of title, as it is claimed, it is only colorable, for he has made out no title under the tax deed. The fact that he has a tax deed, that the tax deed was recorded and that he has paid the taxes on the property, is no proof of title at all as against the real owner. In this case there was no actual possession until the year 1870, and from that date we have thirteen years of adverse possession by the complainant. But thirteen years of adverse possession does not make a title. It requires twenty years of adverse possession to make a good title, and that possession must be open, notorious and actual, not constructive. Payment of taxes does not amount to adverse possession; nor does recording a deed amount to it, and for the reason that it is not visible, open and notorious, and more it is not actual. There is not an authority in the books which supports or gives countenance to the pretext that a man can be ousted of the title to his property by some other person paying his taxes, and by simply getting a tax deed for the land. The tax deed must either be valid or there must be actual, open, notorious, visible adverse possession against all the world for twenty years. It is not necessary that a mere fence should be about it, but there must be actual, open and notorious possession of the property.

We do not find the statute, which is in force here, in regard to adverse possession either in Thompson's Digest or in Kilty's Laws of Maryland. Our statute is the statute of 21 James, ch. 1, sec. 16. It is to be found in Alexander's British Statutes, but you will not find in Thompson's Digest or Kilty any statute on the subject of adverse possession. The statute of James declares that no man shall be deprived of his right to enter upon his land except by an adverse possession of twenty years. Some of the States have their own statutes upon the subject which prescribe twenty-one years, but we have no statute of our own except this English one, which has always been held to be in force here. In this case there has been an adverse holding for thirteen years only. So that there is no title by adverse possession.

To meet these difficulties, the complainant avers that he has a right to be considered in possession of the property, because the tax deed was recorded in 1841, and that gives him color of title, and that he has been paying taxes upon the property himself, and those under whom he claims have also paid taxes; but that cannot eke out adverse possession, because the payment of taxes and the recording of the deed are no part of adverse possession. The complainant, therefore, so far as this court can see, has no title upon this record, either under the tax sale or by means of adverse possession. That is enough to dispose of this case, but we wish to say something about these applications to quiet title, in regard to which courts have always been very exact.

Courts of equity will never interfere between two claimants to a piece of real estate, for the purpose of quieting title, unless the complainant shows a clear and indisputable title, but will leave him to any other remedy that he may have.

In Alexander and others v. Pendleton 8th Cranch, 462, Chief Justice Marshall says that "the prayer of the bill ought not to be granted in a doubtful case" to quiet title. And in Orton v. Smith, 18th Howard, 265, Mr. Justice Grier says: "Those only who have a clear, legal and equitable title to land, connected with possession, have any legal right to claim the interference of a court of equity to give them peace or dissipate a cloud upon the title."

It is a mere flight of imagination, upon the part of counsel for complainant in this case, it seems to us, to assume that there is shown in this case such a clear, legal

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and equitable title to the property in question, accompanied by possession, as to call for the intervention of this court. It is said that the court should interfere in case of this kind, where the plaintiff has possession, for the reas on that he cannot bring an action of ejectment. He cannot bring the case to issue, but must stay there in possession and wait an attack from the other party. In other words, being in possession, he must either stay until adverse possession completes his title, or he must be without a remedy..

Well, that is an appeal which might be made to the legislature, and we see, in looking through the cases, that in one of the States—the State of Ohio—they have a statute which meets the case. There any party in possession who wishes to clear his title may, without waiting for the completion of his title through adverse possession, file his bill against all persons whom he may name whom he charges with having adverse claims, and he can bring them into court for the purpose indicated, at any time. That probably is a very salutary statute; but we have no such law here.

Purchasers at tax sales have never been very much favored. Here the original sale was made in 1827 for taxes due in 1824, 1825 and 1826, and this property was sold for $1.42. But the complainant says that he has paid a large sum of money for this property; and it is claimed that this gives him a strong equity. We do not think so; every man who buys under a tax title knows that he is buying something that he is obliged to defend.

Here the original sale was for a dollar and forty-two cents, and no deed was made in pursuance of this sale until 1841. Whether any changes in the tax office took place in the meantime, or whether the officer who made the sale in 1827 was the officer who made the deed, or whether the forms of law were complied with in regard to the sale, in any respect, we do not know, because upon none of these matters have we any evidence, and no court of equity is to presume very strongly in favor of a tax title. A party who purchases from others who hold a tax title, purchases with full knowledge that he is running a risk, and he is bound to know whether the tax title is good or not. He buys with his eyesopen. To no person does the rule *caveat emptor* apply more than to the purchaser of a tax title. The intermediate owners of this tax title died, and, among others, William B. Todd, and generally when a man dies seized of real estate, and leaves it to his heirs, it is some presumption in his favor. But there is no presumption at all in favor of the validity of a title which is descended from a deceased ancestor, unless that ancestor died seized. None of these intermediate owners of this tax property ever died seized of this lot.

We think on every ground that the bill ought to be dismissed. That was the decree below, and we affirm the decree.

United States Supreme Court.

No. 886—OCTOBER TERM, 1884.

LIDA C. HARDIN, ADMINISTRATRIX OF WILLIAM D. Hardin, deceased, and Floy A. Hardin, Lida C. Hardin, Wm. D. Hardin, and John J. Hardin, children and heirs at law of Wm. D. Hardin, deceased, Appellants,

vs.

BLAND P. BOYD, ADMINISTRATOR OF JOHN D. Ware, deceased; Emma Ware, J. L. Lett and Mary N. Lett, his wife, J. P. Moses and Sue Moses, his wife.

Appeal from the Circuit Court of the United States for the Eastern District of Arkansas.

No rule can be laid down in reference to amendments of equity pleadings that will govern all cases. They must depend upon the special circumstances of each case, and in passing upon applications to amend, the ends of justice must not be sacrificed to mere form or by too rigid an adherence to technical rules of practice.

In a suit brought by the heirs and administrator of a vendor of land by title bond, the bill alleged that the bond has been obtained by fraud, and, also, that the land had not been fully paid for according to the contract of sale. Its prayer was, among other things, that the bond be canceled: that an account be taken of the rents and profits which the purchaser had enjoyed, and of the amount paid on his purchase; that the title of the complainants be quieted; and that they have such other relief as equity might require. At the final hearing the complainants were permitted to amend the prayer of the bill so as to ask, in the alternative, for a decree for the balance of the purchase money and a lien on the land to secure the payment thereof: *Held*, That no error was committed in allowing the amendment. It did not make a new case, but

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only enabled the court to adapt its relief to that made by the bill and sustained by the proof The bill, with the prayer thus amended, was in the form in which it might have been originally prepared consistently with the rules of equity practice.

The case distinguished from Shields vs. Barrow, 17 How.. 130.

Although the debt for unpaid purchase money was barred by limitation under the local law, the lien therefor on the land was not barred; for there was no such open adverse possession, for the period within which actions for the recovery of real estate must be brought as would cut off the right to enforce the equitable lien for purchase money.

STATEMENT.

The main question on this appeal relates to the alleged error of the circuit court in permitting the complainants, at the hearing, to amend the prayer of their bill, so as to obtain relief not before specifically asked, and, which appellants contend, is inconsistent with the case made by the bill. To make intelligible this and other questions in the cause, it is necessary to state the issues and the general effect of the evidence.

On the 28th day of March, 1871, John D. Ware executed his title bond to William D. Hardin, reciting the sale to the latter of certain lands in Crittenden county, Arkansas, for the sum of twenty thousand dollars, one-half of which was to be paid at the delivery of the bond, and the remainder, on the 1st day of January thereafter, in county scrip or warrants; and providing for a conveyance to the purchaser, when the purchase money should be fully paid. Ware died at his home in Tennessee on the 6th day of December, 1871. In the same month the probate court of Crittenden county appointed L. B. Hardin (a brother of the purchaser) to be administrator of Ware; and on the 15th of January, 1872, his bond having been on that day filed and approved, letters of administration were directed to be issued. Under date of the 23d of January of the same year, L. B. Hardin, in his capacity as administrator, executed to the purchaser an absolute conveyance of all the right, title and interest of Ware in the lands. The deed recited the payment by the grantee to the said administrator of ten thousand dollars in Crittenden county scrip and warrants, and that the deed was made in conformity with an order of the probate court.

The general statutes of Arkansas declare that "when any testator or intestate shall have entered into any contract for the conveyance of lands and tenements in his lifetime, which was not executed and performed during his life, and shall not have given power by will to carry the same into execution, it shall be lawful for the executor or administrator, of such testator or intestate, with the approval in term time, to execute a deed of conveyance of and for such lands, pursuant to the terms of the original contract; such executor or administrator being satisfied that payment has been made therefor, according to the contract, and reciting the fact of such payment to the testator or intestate, or to such executor or administrator, as the case may be, which deed may be acknowledged as other deeds, and shall have the same force and effect to pass the title of such testator or intestate to any such lands as if made pursuant to a decree of court." Act Feb. 21, 1859; Gantt's Dig., 180.

By deed of July 10, 1877, W. D. Hardin conveyed these lands to his wife, and they were in possession by tenants when the present suit was instituted on the 28th of October, 1881. The complainants are the heirs at law of the vendor and one Boyd, his administrator, the latter having been appointed at the last domicil of the decedent in Tennessee. The defendants were W. D. Hardin and his wife and their tenants. The bill proceeds upon these grounds: That Ware's obligation of March 28, 1871, was obtained through fraud and imposition practiced by the purchaser; that the latter was at liberty, according to the real agreement between him and Ware, to pay the entire purchase money in county scrip or warrants; that he and his wife were in possession, claiming the lands to be the absolute property of the latter, although no part of the purchase money had been paid, except five thousand four hundred dollars paid to the intestate in county scrip or warrants at their face value; that no such proceedings as are recited in the deed to W. D. Hardin were ever had in the probate court of Crittenden county; that the ten thousand dollars in scrip or warrants, which the deed states was paid by W. D. Hardin, were disposed of at private sale for fifteen cents on the dollar of their face value, and the proceeds applied, by collusion between the purchaser and his brother, to a claim which they, acting together, fraudulently procured to be allowed in favor of W. D. Hardin against Ware's estate, when, in fact, no such indebtedness existed; that all the papers relating to the estate of Ware were destroyed by Harding while in his custody as clerk of the probate court, for the purpose of concealing his fraudulent scheme to obtain the lands without paying for them; that the deed from Hardin to his wife was without consideration, and that Hardin, after he took possession of the lands, appropriated to his own use all the rents annually accruing therefrom.

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The prayer of the bill was that "the said bond for title, and the said deeds made by Lucian B. Hardin to said Wm. D. Hardin, and by the latter to said Lida Hardin, his wife, may be set aside for fraud; that an account may be taken of the said rents and profits, and of the value of the county warrants delivered by said William D. Hardin, and that your orators may have a personal decree against said defendants for any balance that may be found to be justly due to them; that a decree may be rendered quieting the title of the plaintiff herein to said lands against said claims of the said defendants, and for such other relief as equity may require."

Hardin and wife filed separate answers, and also pleas relying upon the Statute of Limitations in bar of the suit. They also demurred to the bill upon numerous grounds.

A good deal of evidence was taken touching the physical and mental condition of Ware at and before the execution of his title bond, as well as upon the issue as to whether Hardin had paid for the lands according to contract. Without detailing all the facts, it is sufficient to say that, according to the weight of the evidence, the payment to Ware of the five thousand four hundred dollars in county scrip or warrants was the only one ever really made on Hardin's purchase of these lands, and that the alleged payment subsequently of ten thousand dollars in like scrip or warrants to L. B. Hardin, administrator, was not intended to be a payment on the land, because the proceeds of their sale were, by collusion between him and W. D. Hardin, appropriated by the latter on a fictitious claim asserted by him against Ware's estate.

Such was the state of the record when the cause came on for hearing. After the evidence was read the complainants asked leave to amend the prayer of the bill by inserting therein the following words: "Or, if, thought proper, that the court give a decree for the purchase money due on said lands, and that plaintiffs be decreed to have a lien on said lands for the payment thereof, and that said lien be foreclosed." This amendment was allowed, and the defendants excepted. And thereupon the court, having heard the evidence and argument of counsel, rendered a final decree, adjudging that W. D. Hardin was indebted to B. P. Boyd, administrator of Ware, in the sum of $17,150 on the purchase money for the lands, and that complainants have a lien thereon for its payment, relating back to the date of the title bond. The deeds from L. B. Hardin, administrator, to W. D. Hardin, and from the latter to his wife, were cancelled for fraud and the land ordered to be sold in satisfaction of the lien; no sale, however, to take place until the heirs of Ware should file in court a warranty deed for the lands. The court refused to give a personal decree for the balance of the purchase money, "the same being barred by the Statute of Limitations." Subsequently, the heirs of Ware filed the required deed in court, and the decree was made absolute.

Hardin appealed to this court. After the appeal was perfected he departed this life, and, by consent, it was revived in the name of Mrs. Hardin, as his administratrix. After the submission of the cause here the heirs at law of Hardin appeared, and by consent they were made co-appellants, without opening the submission.

Mr. Justice HARLAN, after stating the foregoing facts, delivered the opinion of the court.

In reference to amendments of equity pleadings the courts have found it impracticable to lay down a rule that would govern all cases. Their allowance must, at every stage of the cause, rest in the discretion of the court; and that discretion must depend largely on the special circumstances of each case. It may be said, generally, that in passing upon applications to amend, the ends of justice should never be sacrificed to mere form, or by too rigid an adherence to technical rules of practice. Undoubtedly, great caution should be exercised where the application comes after the litigation has continued for some time, or when the granting of it would cause serious inconvenience or expense to the opposite side. And an amendment should rarely if ever be permitted where it would materially change the very substance of the case made by the bill, and to which the parties have directed their proofs. The rule is thus stated in Lyon v. Talmadge, 1 Johns. Ch., 188: "If the bill be found defective in its prayer for relief, or in proper parties, or in the omission or statement of fact or circumstance connected with the substance of the case, but not forming the substance itself, the amendment is usually granted. But the substance of the bill must contain ground for relief. There must be equity in the case, when fully stated and correctly applied to the proper parties, sufficient to warrant a decree." And in 1 Daniell's Ch. Pr., 384 (5th ed.) the author, after alluding to the rule in reference to amendments, observes: "The instances, however, in which this will be done are confined to those where it appears, from the case made by the bill, that the plaintiff is entitled to relief, although different from

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that sought by the specific prayer; when the object of the proposed amendment is to make a new case, it will not be permitted." Whether the amendment in question changed the substance of the case or made a new one we proceed to inquire.

The original bill in this suit certainly states facts entitling complainants to some relief. He and his wife were in possession, asserting title, freed from all claim of whatever kind upon the part either of the heirs or of the estate of Ware. The complainants evidently supposed that the relief to which they were entitled was a cancellation, upon the ground of fraud, of Hardin's contract of purchase as well as of the deeds to him and his wife, with an accounting that would embrace, on one side, the rents and profits derived from the lands, and, on the other, the value of the scrip or warrants that he had delivered in part payment of the purchase money. But if it were doubtful whether the evidence was sufficient to justify a decree setting aside the contract upon the ground of fraud or imposition practiced upon the vendor, and if the evidence clearly showed that the purchaser had not fully paid for the lands, according to the terms of his purchase, should the complainants have been driven to a new suit in order to enforce a lien for the unpaid purchase money? And this, too, after the parties had taken their proofs upon the issue, distinctly made by the pleadings as to the amount of the purchase money really due from Hardin. Such practice would have done no good to either party, and must have resulted in delay and additional expense to both. A new suit to enforce a lien on the land would have brought before the court the same evidence that was taken in this cause as to the amount Hardin had paid. When leave was asked to amend the prayer for relief, no objection was made by the defendant; but the amendment having been allowed, he excepted, but without any suggestion of surprise, or any intimation that he was able or desired to produce additional proof upon that issue. Apart from the allegations in reference to fraud in obtaining the title bond, the bill made a case of non-payment of the greater part of the purchase money. To amend the prayer of the bill so as to justify a decree consistent with that fact, did not make a new case nor materially change the substance of the one actually presented by the bill and the proofs. It served only to enable the court to adapt its measure of relief to a case distinctly alleged and satisfactorily proved. The complainants could thereby meet the objection, which otherwise might have been urged, that the nature of the specific relief originally asked precluded the court from giving, under the general prayer, the particular relief which the amendment and the proof authorized.

It is a well settled rule that the complainant, if not certain as to the specific relief to which he is entitled, may frame his prayer in the alternative, so that if one kind of relief is denied another may be granted; the relief, of each kind, being consistent with the case made by the bill. Terry v. Rosell, 32 Ark., 492; Cotton v. Ross, 2 Paige, 396; Lloyd v. Brewster, 4 Ib., 540; Lingan v. Henderson, 1 Bland, 252; Memphis v. Clark, 1 S. & M., 236. Under the liberal rules of chancery practice which now obtain, there is no sound reason why the original bill in this case might not have been framed with a prayer for the cancellation of the contract upon the ground of fraud and an accounting between the parties, and, in the alternative, for a decree which, without disturbing the contract, would give a lien on the lands for unpaid purchase money. The matters in question arose out of one transaction, and were so directly connected with each other that they could well have been incorporated in one suit involving the determination of the rights of the parties with respect to the lands. The amendment had no other effect than to make the bill read just as it might have been originally prepared consistently with the established rules of equity practice. It suggested no change or modification of its allegations, and, in no just sense, made a new case.

The decision in Shields v. Barrow, 17 How., 130, is invoked, with some confidence, as authority against the action of the court in allowing the prayer of the bill to be amended. That was a suit to set aside an agreement of compromise on the ground of fraud and imposition, and to restore the complainant to his original rights under a contract for the sale of certain lands and other property. The bill was fatally defective as to parties. No decree could have been based upon it for indispensable parties were not before the court, and could not be subjected to its jurisdiction. The amendment of the bill, there tendered and allowed by the court of original jurisdiction, not only asked that the compromise, if held binding, be specifically enforced, but it brought into the case entirely new issues of fact and law, and made an additional defendant in his individual capacity and as tutor of his minor children. The relief sought by that amendment was, therefore, not within the case set out in the original bill. Nor was the application there as here simply to amend the prayer of the bill,

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so as to ask, in the alternative, for specific relief within the case as originally presented. It was regarded by this court as an attempt, under the cover of amendment, to change the very substance of the case. That such was its view upon the point necessary to be decided is clear from the opinion, for the court said: "To strike out the entire substance and prayer of a bill, and insert a new case by way of amendment, leaves the record unnecessarily encumbered with the original proceedings, increases expenses, and complicates the suit; it is far better to require the complainant to begin anew. To insert a wholly different case is not properly an amendment, and should not be considered within the rules on that subject." The circumstances of the present case are entirely different from those in Shields v. Barrow. The amendment here did not introduce new allegations, nor make additional parties, nor encumber the record, nor increase the expenses of the litigation, nor complicate the suit, nor make new issues of fact. It simply enabled the court, upon the case made by the original bill, to give the relief which that case justified. Neal v. Neal, 9 Wall., 8; Tremolo Patent Case, 23 Ib., 518; Burgess v. Graffam, 10 Fed. Rep., 219; Battle v. Mutual Ins. Co., 10 Blatch., 417; Ogden v. Thornton, 30 N. J. Eq., 573, (3 Stew.); McConnell v. McConnell, 11 Vt., 291.

We are of opinion, for the reasons stated, that the amendment of the prayer of the bill was properly allowed, and that there was no error in adjudging that Ware's estate had a lien on the land for the balance of the purchase money. The deed to W. D. Hardin, and the deed of the latter to his wife, having been properly cancelled, the legal title remained in the heirs of the vendor. They are not bound to surrender that title except upon the performance of the conditions upon which their ancestor agreed to convey, viz., the payment of the purchase money. According to the local law, they occupied the position of mortgagees; for "the legal effect of a title bond is like a deed executed by the vendor and a mortgage back by the vendee." Holman v. Patterson's Heirs, 29 Ark., 363; Martin v. O'Bannon, 35 Ib., 68. The heirs of Ware held the title in trust for the purchaser, while Hardin was a trustee for the payment of the purchase money. Schall v. Biscoe, 18 Ark., 157; Moore v. Anders, 14 Ib., 629; Holman v. Patterson, 29 Ib., 363; Bayley v. Greenleaf, 7 Wh., 50; Boone v. Chiles, 10 Pet., 225; Lewis v. Hawkins, 23 Wall., 126; 1 Story's Eq. Juris., § 1217 *et seq.*; 2 Sugden's Vendors, 375, ch. 19, *n. d.*

But it is contended that the debt for unpaid purchase money, as well as the lien claimed therefor, are equally barred by the Statute of Limitations of Arkansas. An action to recover the debt may be barred by limitation, yet the right to enforce the lien for the purchase money may still exist. Lewis v. Hawkins, 23 Wall., 127; Birnie v. Main, 29 Ark., 593; Colcleugh v. Johnson, 34 Ib., 318. In the case last cited the Supreme Court of Arkansas said: "The debt itself would appear to be barred in 1872, and no action could be brought at law. But the bar of the debt does not necessarily preclude a mortgagee or vendor retaining the legal title from proceeding *in rem* in a court of equity to enforce his specific lien upon the land itself. . . . Unless the defendant can show that the lien has been in some way discharged and extinguished, or lost upon some equitable principles, such as estoppel, he can only interpose the bar of adverse possession of the land for such time as would bar the action at law for its recovery." In the same case it was held that, as between mortgagor and mortgagee, the possession of the mortgagor is not inconsistent with the mortgagee's right so long as the latter does not treat the former as a trespasser; that where the mortgagor remained the actual occupant with the consent of the mortgagee he was strictly tenant at will; that if the tenancy be determined by the death of the mortgagor, and his heirs or devisees enter and hold without any recognition of the mortgagor's title by payment of interest or other act, an adverse possession may be considered to take place. "The principle," said the court, "is a wholesome one for both parties, as it enables the mortgagee (or vendor by title bond) to rest securely on his legal title, and indulge the mortgagor or purchaser, whilst the latter can easily, upon payment, procure the legal title, or have satisfaction of the mortgage entered of record under the statute; and even if he should neglect this a court of chancery would not entertain a stale demand for foreclosure after many years without clear proof rebutting the presumption of payment; or if the mortgagor should die and the heirs should enter without recognition of the mortgagee's rights, the Statute of Limitations would commence to run as in case of adverse possession."

When did adverse possession begin in the present case? Not when Hardin took possession of the land, for he went into possession in the lifetime of the vendor, and with his consent. The claim of adverse possession cannot be based either upon the alleged

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proceedings in the probate court purporting to authorize and direct the administrator of Ware to execute a deed to Hardin, or upon the deed which was made to him by such administrator; for, according to the weight of evidence, no such action was ever taken by the court, and, by its order, made a matter of record, and that deed, although filed for record, was never recorded during the period when Hardin held the office of clerk of that court, nor until 1877. So that there was nothing upon the public record of conveyances, as shown at the hearing, nor in any of the circumstances attending Hardin's possession, prior to the conveyance to his wife, that showed such open, notorious adverse possession of the land as was requisite to change the relations originally existing between the vendor and purchaser, or between the latter and the heirs of the former. Hardin's possession under the deed of the administrator was simply a continuation of the possession originally obtained with the consent of his vendor. If it be said that Mrs. Hardin's possession under the deed from her husband was, upon her part, an assertion of title adverse to any claim that Ware's estate had, it may be answered that such possession commenced less than seven years prior to the bringing of this suit, which is the period within which the statutes of Arkansas require action or suits to be brought for the recovery of real estate.

It is objected to the decree that the value of the county scrip or warrant, which the court found had not been delivered by Hardin in payment for the land, should have been ascertained upon the basis of value as alleged in the original bill, namely, ten cents on the dollar; and this, although the answer placed their value at seventy-five cents. According to the preponderance of evidence, they were worth about seventy cents on the dollar of their face value. The court was not obliged to accept the allegations of value in the pleadings, and should have been controlled, on this point, by the evidence. We do not perceive any error in the aggregate amount ascertained to be due, taking the two instalments of purchase money at the market value of the scrip or warrants, in which they were payable, at the time they were respectively due, and giving interest upon those amounts from the maturity of each instalment.

Some time after the decree Hardin filed a petition for rehearing, submitting therewith copies of numerous papers (alleged to have been lost at and before the final hearing) purporting to relate to a suit instituted by the heirs of Ware in the Crittenden Circuit Court against L. B. Hardin, for the purpose of having him removed as administrator, or preventing his interfering with the assets of the estate. The record of that suit, it was alleged in the petition for rehearing, disproved the principal grounds upon which the decree in this case was rested. Without assenting to this view, and without commenting upon the failure of the petition to disclose the circumstances under which the papers alleged to have been lost were found, it is sufficient to say that the granting of a rehearing was a matter within the discretion of the court below, and not to be reviewed here.

Other questions are discussed in the briefs of counsel, but we have noticed all that we deem of importance. There is no error in the decree, and it is affirmed.

The Courts.

U. S. Supreme Court Proceedings.

No. 1291. The United States v. Francis H. Swan;
No. 1292. The United States v. Samuel B. Hinkeley, administrator, etc.;
No. 1293. The United States v. John Muldoon, administrator, etc.;
No. 1294. The United States v. Mary J. Hamilton, administratrix, etc.;
No. 1294. The United States v. William C. Williamson, administrator, etc.;
No. 1296. The United States v. Bernard Harley;
No. 1297. The United States v. Daniel G. George, etc.;
No. 1298. The United States v. Henrietta A. Buckbee, administratrix;
No. 1299. The United States v. Henry Wilkes;
No. 1300. The United States v. Julius O. Deming, administrator, etc.; appeals from the Court of Claims; affirmed per stipulation.

APRIL 6, 1885.

R. J. Morgan, of Memphis, Tenn.; H. W. Smith, of Blackfoot, Idaho; George E. Hubbell, of Davenport, Ia., and Albert J. Le Breton, of San Francisco, Cal., have been admitted to practice.

No. 203. The Chesapeake & Ohio Railway Company v. Joseph S. Miller, auditor, etc.; decree affirmed with costs. Opinion by Mr. Justice Matthews.

No. 103. Charles R. Bissell v. Simon H. Foss et al.; decree affirmed with costs. Opinion by Mr. Justice Woods, Mr. Justice Bradley and Mr. Justice Matthews dissenting.

No. 201. Silas S. Huntley v. Thomas S. Huntley, executor, etc., et al.; appeal from the Supreme Court of the District of Colombia; decree reversed with costs, and cause remanded for further proceedings to be had therein not inconsistent with the opinion of this court. Opinion by Mr. Justice Harlan.

No. 1180. The City of Litchfield v. George William Ballou et al.; decree reversed with costs, and cause remanded with directions to dismiss the bill. Opinion by Mr. Justice Miller, Mr. Justice Harlan dissenting.

No. 8. Original. Ex parte. In the matter of Ellis G. Hughes, petitioner. Rule discharged with costs. Opinion by Mr. Chief Justice Waite.

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SUPREME COURT OF THE DISTRICT OF COLUMBIA GENERAL TERM.

MARCH 30, 1885.

Burnett v. Church et al.; judgment below affirmed.

Beneficial Endowment Association v. Hood; argued and submitted.

MARCH 31, 1885.

Collins v. Johnson; argued and submitted.

Giddings v. Squier; death of defendant suggested.

Strong v. District of Columbia; leave for plaintiff to withdraw motion filed February 18.

APRIL 1, 1885.

Westham Granite Company v. Chandler; order dismissing case vacated.

Harris et al. v. Dammann; restored to the calendar.

Birney v. Robbins; decree below affirmed, and appeal to the United States Supreme Court allowed.

APRIL 2, 1885.

Dubois v. Boarman; continued for settlement.

Cady v. Lawler; settled.

Westham Granite Company v. Chandler.

In re estate of Richard Vigle; remanded to probate court.

APRIL 3, 1885.

Nat. Bank of the Republic v. Hume; on hearing.

APRIL 6, 1885.

Jones v. Baltimore & Ohio Railroad Company; opinion by Justice James awarding a new trial.

Westham Granite Company v. Chandler et al.; decree to be prepared.

Giddings v. Squire; opinion by Chief Justice; judgment of condemnation order.

French v. Campbell; appeal dismissed with costs.

Collins v. Johnson; opinion by Justice James permitting complainants to redeem property.

National Bank of the Republic v. Cleary et al.; on hearing.

Death of R. K. Elliott announced

APRIL 7, 1885.

Nat. Bank of the Republic v. Hume; on hearing.

APRIL 8, 1885.

Same v. Same; argued and submitted.

APRIL 9, 1885.

Strong v. District of Columbia; on hearing.

APRIL 10, 1885.

Strong v. District of Columbia; argued and submitted.

Hamilton v. Morrison; decree of Special Term affirmed and plaintiff ordered to pay costs of suit.

APRIL 11, 1885.

In the matter of the habeas corpus of Philip S. Wales; argued and submitted.

IN EQUITY.—New Suits.

April 4, 1885

9383. Elizabeth Windsor v. Thurston Johnston To set aside judgment at law, &c Com sols, Carusi & Miller.

9384 Harriet M. Anthony, alleged insane. Upon petition of James Y. Anthony. To convey. Com sols, Edwards & Barnard.

9385. Robert P. J. Allen v. The Remington Company et al. Acct., &c. Com sol, J. A. Smith.

April 7, 1885.

9386. Southey S. Parker et al v. Mary M Lewis et al. To cancel deed and to sell. Com sol, W. T. Bailey.

9387. Catharine M. B. Jones v. William Jones. For divorce. Com sol, Wm. G, Johnson.

April 8, 1885.

9388 John C. Starkweather et al. v. Mary J. Veazie et al. To restrain, &c. Com sol, J. Coleman.

April 9, 1885

9389. Charles A. Eldridge v. Katherine L. Brice et al Attachment for rent. Com sol, Lewis and Sprigg.

9390. George W. McGoines v. Anne McGoines. For divorce. Com sol, Frank Closs.

CIRCUIT COURT.—New Suits at Law.

April 4, 1885.

26071. Josephine W. Wupperman v William B. Hartig. Acct, $358 88. Piffs atty, H. W. Garnett.

April 7, 1885.

26072. Olivia H. Crosseley et al. v Gill & Reardon. Acct. rent, $325 Piffs attys, Mills and McNally.

26073. Elizabeth Mishaw v A. A Hopkins et al. Note, $435.40 Piffs atty, John E. McNally

26074 John Faunce, trustee, v. Frank P. Blair, jr. Replevin. Piffs atty, H. W. Garnett.

April 8, 1885.

26075. Samuel Cropley's Sons v. J T. Shreve Acct., $80.74. Piffs atty F. W. Jones.

26076. John A. Pierson v. John Lang. Judg't of Justice Taylor, $22 21.

April 9. 1885.

26077 George Hill, jr., v. The Evening Critic Publishing Co, of Washington, D. C. Notes and acct., $2701.65. Piffs atty, F W Jones.

26078. John E. Condon v. Milton H. Johnson et al. Judgment of Justice Taylor, $37.81. Piffs atty, P. B. Stilson.

26079 The Central National Bank v Charles E. Fisher et al. Note, $300. Piffs attys Edwards & Barnard.

26080. Same v Thomas W. Miller et al. Note, $325. Piffs attys, Same.

26081 Same v. Alice Kelly et al Note, $211.17 Piffs attys, Same.

26082. Same v. Leon Schell et al. Note, $132 62. Piffs attys, Same.

26083 Peter H. Leonard v. Herman Hollander. Notes, $350 91 Piffs attys, Same.

26084. Frank L Beach v W. W. Boarman, adm'r. Acct. $540. Piffs atty, J. E Norris.

26085. Charles H Howell & Co. v Edward C. Gill. Acct., $298 14. Piffs atty, C. C. Cole.

26086 F. T. Browning v. Joseph Williams. Judgment of Justice O'Neal, $100. Piffs atty, F. T. Browning.

PROBATE COURT.—Justice James.

April 10, 1885.

Estate of Jonathan Taylor. Answer of W Danenhower filed

Estate of B M. Reed Order appointing Annie L. Reed administratrix; bond, $650.

Estate of Maria C. Koch. Proof of publication filed.

Estate of Walter Stewart. Order admitting will to probate.

Estate of Francis Straub. Administrator bonded and qualified

Estate of August Dohrer. Will admitted to probate and record, and Henry Lucket and Henry Kock appointed ex'rs.

Estate of Samuel W. Koontz. Letters granted to C. E Creecy, bond $200.

Estate of Wallace W. Grant. Same order, bond, $600.

Estate of Benjamin C. Berry. Same order, bond. $200.

Estate of Lafayette Jacobs. Same order, bond, $200.

Estate of James Beattie. Same order, bond, $500.

Estate of Jas. B. O'Brien. Same order, bond, $400.

Estate of Jas Bluett Same order, bond, $500.

Estate of Benjamin Ross Same order, bond. $200

Estate of Lawrence Roessiter. Same order, bond, $500.

Estate of Samuel Schaffer Same order, bond, $400.

Estate of Augustus Wusterfeldt Same order, bond, $500.

Estate of John D. Nutting Same order, bond, $200.

Estate of Samuel S Lester Same order, bond, $500.

Estate of Peter A Becker. Same order, bond $400.

Estate of Stephen L. Calhoun. Letitia Calhoun appointed administratrix, with bond of $500

Estate of Z H Whitemore Peter Paret appointed administrator, with bond of $500

Estate of John W King Order appointing Charles R. King administrator, with bond of $500

Estate of David R P. Bigley Order appointing Mary A. Bigley administratrix, with bond of $700

Estate of Jas. R Loudon. Order appointing C. E. Creecy administrator, with bond of $500

Estate of Wm Thompson Same order and bond.

Estate of Jas Mc olgan. Same order and bond

Estate of F. D Parsons Same order and bond

Estate of John C Mansfield Order appointing Mary A. Mansfield administratrix, with bond of $500

Estate of Albert Brewer Order of publication

Estate of Edward Gannon Order of publication

Estate of Charles H. Hospital Order that letters of administration issue to Jos. A. Gamble with bond of $.00

In re will of F G Middleton Admitted to probate and record, and letters granted to widow on bond of $6 000.

Estate of E. B. Caton. Answer to petition of widow filed by C E. Creecy.

Estate of Wm Drane Answer to petition of mother filed

Estate of Nellie Jidt Letters granted to Henrietta C Sinclair et al, with bond of $1,000

Estate of Jas. H. Ball. Account of sale of personalty returned.

Estate of Walter Stewart. Will admitted to probate and record.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 9th day of April, 1885.

JOHN E. KENDALL
v.
MARY JOSEPHINE MONROE and JAMES MONROE. } No. 9365. Equity.

On motion of the complainant, by Edwards & Barnard, their solicitors, it is ordered that the defendant James Monroe, cause his appearance to be entered herein on or before the first rule day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. CHARLES P. JAMES, Justice.
True copy. Test: 15 R. J MEIGS, Clerk

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 8th day of April, 1885.

SALLIE H. OWEN
v
KENNEDY R OWEN. } No. 9345 Eq Doc. 24.

On motion of the plaintiff, by Messrs. Worthington & Heald, her solicitors, it is ordered that the defendant, Kennedy R. Owen, cause his appearance to be entered herein on or before the first rule day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. CHARLES P. JAMES, Justice.
A true copy. Test: 15 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 9th day of April, 1885.

CHRISTIAN RUPPERT
v.
GEORGE A HASKE ET AL. } No. 9275 Equity docket 24.

On motion of the plaintiff, by Messrs. Hanna & Johnston, his solicitors, it is ordered that the defendants, Bernard A. Haske and Chas. E. Prentiss, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHARLES P. JAMES, Justice.
True copy. Test: 15 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. April 10th, 1885.

In the matter of the estate of Edward Gannon.

Application for Letters of Administration on the Estate of Edward Gannon late of the Police Force of the District of Columbia, has this day been made by Patrick M. Kelly, a creditor.

All persons interested are hereby notified to appear in this court on Friday, the 1st day of May, next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

By the Court. CHARLES P. JAMES, Justice.
Test: H. J. RAMSDELL, Register of Wills.
V B EDWARDS, Solicitor. 15

THIS IS TO GIVE NOTICE

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Wiley Lane, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 4th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of April, 1885.

JAMES M GREGORY,
JAS. H SMITH, Solicitor. 15 Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business. April 10th, 1885

In the matter of the Estate of Albert Brewer.

Application for Letters of Administration on the estate of Albert Brewer, late of the Police Force of the District of Columbia, has this day been made by John W Brewer.

All persons interested are hereby notified to appear in this Court on Friday, the 1st day of May next, at 11 o'clock, a m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.
Test: H. J RAMSDELL, Register of Wills.
V. B. EDWARDS, Solicitor. 15

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia

THOMAS H. MORGAN ET AL., Complainants.
v
PETER BOLDEN ET AL., Defendants. } Equity. No. 9302.

Edward H Thomas, trustee, having reported that he has sold lot "F" of Wm. O. Clark's subdivision of original lots 7 and 8, in square Two hundred and sixty-eight, to John Daly, at and for the sum of $850: It is by the Court, this eighth day of April, 1885, ordered that the said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 8th day of May, 1885. Provided, a copy of this order be published in the Washington Law Reporter and in the Evening Star, of Washington, D. C., once in each of three successive weeks before said last named day.

CHARLES P. JAMES, Justice.
A true copy. Test: 15 R J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE

That the subscriber hath obtained from the Supreme Court D. C., holding Special Term for Orphans' Court business, Letters of Administration on the estate of John Bell, late of Washington, D. C, deceased.

And that all persons having claims against said deceased are required to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of April, 1886; as they may otherwise be excluded by law from all benefit of said estate.

Given under my hand April 9th, 1885.

CATHARINE BELL,
15 Administratrix.
S W. Cor. 2d and C, N. W., Washington, D. C.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Chas. Miller, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of April, 1885.

HENRY R. MILES,
A. C. RICHARDS, Solicitor. 15 Administrator.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration c. t a. on the personal estate of Mary E. Davison, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of March, 1885.

MYRON M PARKER,
R. D. MUSSEY, Solicitor. 15 Administrator c t a.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration on the personal estate of Charles M. Murdock, late of Ontario, Canada, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of March, 1885

FRED. W JONES,
15 Administrator.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Eliza Young, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 9th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 9th day of April, 1885.

JOSEPHINE YOUNG,
REBECCA R. YOUNG,
IRVING WILLIAMSON, Solicitor. 15 Executrices.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 27, 1885.

In the matter of the Estate of James L. Gates, late of the Police Force of the District of Columbia, deceased

Application for Letter of Administration on the estate of the said deceased has this day been made by Charles E. Creecy.

All persons interested are hereby notified to appear in this court on Friday the 17th day of April next at 11 o'clock, a m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B. HAGNER, Justice.
Test: 13 H J. RAMSDELL, Register of Wills.
V. B. EDWARDS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 27th, 1885.

In the matter of the Estate of Francis Straub, late of the Police Force of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Charles E. Creecy.

All persons interested are hereby notified to appear in this court on Friday, the 17th day of April, next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

By the Court. A. B. HAGNER, Justice.
Test: 13 H. J. RAMSDELL, Register of Wills.
V. B. EDWARDS, Solicitor. 13

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 23d. day of March, 1885

WHITE, HENTZ & CO v. JOHN WEAVER. } No. 25997. At Law. Doc. 30.

On motion of the plaintiffs, by Mr. E. H. Thomas, their attorney, it is ordered that the defendant, John Weaver, cause his appearance to be entered herein on or before the first rule day, occurring forty days after this day; otherwise the cause will be proceeded with as in case of default

By the Court. W S. COX, Justice.
True Copy Test: 13 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 27, 1885.

In the matter of the Will of William H. Winsor, late of the District of Columbia, deceased.

Application for the probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Solomon E. Faunce.

All persons interested are hereby notified to appear in this court on Friday, the 17th day of April next at 11 o'clock, a. m., to show cause why the said will should not be proved and admitted to probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B HAGNER, Justice.
Test: 13 H. J. RAMSDELL, Register of Wills.

THIS IS TO GIVE NOTICE,

That the subscriber, of Washington City hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration on the personal estate of John Ashley, late of Staunton Station, Tenn., deceased

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of February, 1885

PHILIP H. SHERIDAN.
LINDAN KENT, Solicitor. 14

Legal Notices.

THIS IS TO GIVE NOTICE,

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of James D. Clary, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23d day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23d day of March, 1885.

WILLIAM E. EDMONSTON,
13 Executor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Delos B. Sacket, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of March, 1885.

FRANCES ANN SACKET,
GEO. F. APPLEBY, Solicitor. 13 Administratrix.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 20, 1885.

In the matter of the Estate of Bushrod M. Reed dec'd.

Application for Letters of Administration on the estate of Bushrod M. Reed, late of the District of Columbia, has this day been made by Annie L. Reed.

All persons interested are hereby notified to appear in this court on Friday, the 10th day of April next at 11 o'clock, a. m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 13 H. J. RAMSDELL, Register of Wills.
A WEBSTER, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 23d day of March, 1885.

JOHN O'DEA v. ELIZABETH FREY, formerly ELIZABETH MORAN. } No. 26011.

On motion of the complainant, by Mr. E F Arnold, his attorney, it is ordered that the defendant, Elizabeth Frey formerly Elizabeth Moran, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice
True copy. Test: 13 R J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

ABRAHAM KENDICK ET AL. v. BENJAMIN F KENDICK ET AL. } No. 9247. Equity. Doc 24

Benjamin F. Leighton, trustee, in the above-entitled cause, having reported a sale of the lot and premises described in the bill and proceedings, herein to T. A King for the sum of $1100 cash It is this twenty fifth day of March A. D. 1885, ordered that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 27th day of April next. Provided, a copy of this order be published in the Washington Law Reporter, once a week for three consecutive weeks prior to that day.

By the Court. W. S. COX, Justice.
A true copy. Test: 13 R J. MEIGS, Clerk

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 17th day of March, 1885.

SARAH HELEN E. RYAN v. EDMUND T. RYAN. } No. 9356.

On motion of the plaintiff, by Mr. Merriman, her solicitor it is ordered that the defendant, Edmund T Ryan, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
True copy. Test: 13 R. J. MEIGS, Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 27, 1885

In the matter of the Will of Edward M. Spedden, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Isaac L. Johnson.

All persons interested are hereby notified to appear in this Court on Friday, the 17th day of April next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B HAGNER. Justice.
Test: 13 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business. March 27, 1885.

In the matter of the Estate of John Minor late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Alice Alena Smith and James F. Jackson

All persons interested are hereby notified to appear in this court on Friday the 17th day of April next at 12 o'clock, m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B HAGNER, Justice.
Test; 13 H. J. RAMSDELL Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Holding a Special Term for Orphans' Court Business. March 27, 1885.

In the case of John E. Lattimer, Administrator of John P. Butler, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday the 17th day of April, A. D 1885, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test 13 H. J RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business March 27th, 1885.

In the matter of the Estate of Benjamin K Morsell, late of the Police Force of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Charles E. Creecy

All persons interested are hereby notified to appear in this Court on Friday, the 17th day of April next at 11 o'clock, a m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B HAGNER, Justice.
Test: H. J. RAMSDELL, Register of Wills.
V. B. EDWARDS, Solicitor. 13

THIS IS TO GIVE NOTICE:

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Egbert L. Weaver, late of the District of Columbia, deceased

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of March next: they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of March, 1885.

EFFIE C. WEAVER
, B. HAY, Solicitor. 13 Administratrix

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business March 27th, 1885.

In the matter of the Estate of Tenkin Thomas, late of Georgetown, D. C., deceased

Application for Letters of Administration c. t. a on the Estate of the said deceased has this day been made by Wm. Riley Deeble (upon petition of said Deeble and Ellen E. Bangs.

All persons interested are hereby notified to appear in this court on Friday the 17th day of April next at 11 o'clock, a. m, to show cause why the said Letters of Administration c. t a. on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B HAGNER Justice.
Test: 13 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 27th, 1885.

In the matter of the Estate of Henry A. Garrett, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased, has this day been made by Laura V. Mothersed.

All persons interested are hereby notified to appear in this court on Friday, the 17th day of April, next, at 11 o'clock m., to show cause why Letters of Administration on the estate of said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 13 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 27th, 1885.

In the matter of the Estate of Langley B. Culley, late of Baltimore, Md., deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Charles Allen, a creditor.

All persons interested are hereby notified to appear in this court on Friday, the 17th day of April next at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

By the Court. A B. HAGNER. Justice.
Test: 13 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 27, 1885.

In the matter of the Will of Catharine Hill, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Joseph F. Hodgson.

All persons interested are hereby notified to appear in this court on Friday the 17th day of April next at 11 o'clock, a m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test 13 H. J. RAMSDELL, Register of Wills.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of administration c. t. a. on the personal estate of David C Ralston late of the U S. Army, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 16th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of March, 1885.

ANDREW A. LIPSCOMB,
13 Administrator c. t. a.

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Legal Notices.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of George A. Bassett, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of March next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 24th day of March, 1885.
FANNIE C. BASSETT.
HANNA & JOHNSTON, Solicitors. 14 Adm'x c. t. a.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Hattie H. Morse, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of January next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 26th day of January, 1885
THOS. E. WAGGAMAN,
ALEX. PORTER MORSE, Sol'r 14 Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 3d day of April, 1885.
LORIN BLODGETT and ROBERT MORRISON, TRUSTEES, v. U. S. GRANT ET AL. } No. 8870. Eq. Doc.
On motion of the plaintiffs, by Mr. T. Q. Hildebrant, their solicitor, it is ordered that the defendants, The Washington Association and United States Insurance Company, a corporation, and the unknown heirs of Elias B. Caldwell, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.
By the Court. CHARLES P. JAMES, Justice.
True copy Test: 14 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Hannah Adler, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 4th day of April, 1885.
HENRY ADLER,
SIMON WOLF, Solicitor. 14 Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. April 4, 1885.
In the matter of the Estate of William H. Marders.
Application for Letters of Administration on the estate of William H. Marders, late of the Police Force of the District of Columbia, has this day been made by Alice J. McCauley.
All persons interested are hereby notified to appear in this court on Friday, the 24th day of April next at 11 o'clock, a. m. to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. CHARLES P. JAMES, Justice.
Test: 14 H. J. RAMSDELL, Register of Wills.
V. B. EDWARDS, Solicitor

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Sabra P. Abell, late of the District of Columbia, dec'd
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of March next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 28th day of March, 1885.
14 CHARLES R. ABELL.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Holding a Special Term for Orphans Court Business. April 4th, 1885
In the matter of the estate of Henry Addison, late of the Police Force of the District of Columbia deceased.
Application for Letters of Administration on the estate of the said deceased has this day been made by Charles E. Creecy.
All persons interested are hereby notified to appear in this court on Friday, the 24th day of April next at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. CHARLES P. JAMES, Justice.
Test: 14 H. J. RAMSDELL, Register of Wills.
V. B. EDWARDS, Solicitor.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration on the personal estate of Isadora G. Causten, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of March, next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 31st day of March, 1885.
WALTER KER,
JAMES H. TAYLOR, Solicitor. 14 Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 20th day of February, 1885.
HENRY CLARKE ET UX., Complainants, v. HENRY HOHMAN ET AL., Defendants } No. 9338. Eq. Doc. 24.
On motion of the plaintiffs, by Messrs. Hagner & Maddox their solicitors, it is ordered that the defendants, Henry Hohman, and Louise Hohman, his wife, Amelia H. Perry, widow of Anson O. Perry; Leonard Perry, Rachel Rynders, sometimes called Rachel Reynolds, and William Rynders, her husband, Annetta Rynders, sometimes called Annetta Reynolds, and Hiram Rynders, her husband, Elizabeth A. Lent, and Benoni S. Lent, her husband, Elizabeth Atwell, and John Atwell, her husband, and Rossetta Hibbard, defendants, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default
By the Court. A. B. HAGNER, Justice.
A true copy. Test: 14 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.
That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of George W. Rice, late of the U. S. Army, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 30th day of March next; they may otherwise by law be excluded from all benefit of the said estate.
Given under our hands this 30th day of March, 1885.
D. L. BRAINARD,
14 M. P. RICE,
Executors.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration on the personal estate of John O. Birch, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of March next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 27th day of March, 1885.
GEORGE W. HARVEY,
GEO. F. APPLEBY, Solicitor. 13 Administrator.

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Washington Law Reporter

WASHINGTON - - - - - - - April 18, 1885.

GEORGE B. CORKHILL - - - EDITOR

Retirement of District Judges.

It is understood that Justice Andrew Wylie called upon the President a few days ago and informed him that he desired to retire from the bench, and go upon the judiciary retired list as soon as convenient for him to select his successor. Judge Wylie is now 71 years of age, and is in his twenty-third year as a member of this court. He has always been recognized as one of the ablest judges upon the bench. He still retains his vigorous mental and physical condition, but instead of continuing longer in his present situation, desires to avail himself of his privilege of retiring on full pay, to give his attention to his private interests.

It is also said that Chief Justice David K. Cartter, who has long since been eligible for retirement contemplates resigning at an early day; and it is rumored that Justice Arthur Mac Arthur has also thought of taking the same steps, he also being eligible for retirement.

Judge Cartter has, up to this time, given no confirmation of the rumor concerning him, and we do not think that Justice Mac Arthur has any intention of resigning at present. H. O. Claughton, of the District Bar, Judge Keith, of Alexandria, and Judge William M. Merrick, of Maryland, Leigh Robinson, J. J. Johnson and James G. Paine, also of the District Bar, are mentioned in connection with the appointment of Judge Wylie's successor. It will be gratifying to have one of our own lawyers appointed to this responsible position, and we hope that such will be the result.

Myers' Federal Decisions

Volume 10 of Myers' Federal Decisions has been received. The subject of this volume is Corporations (Corporations—Court Records). Under head A, Private Corporations are included: 1. Creation, Nature, Name and Duration; 2. Subscriptions and Stock; 3, Personal Liabilities of Stockholders; 4, Transfer of Stock; 5, Rights of Stockholders; 6, Officers and Agents; 7, Powers, Duties and Liabilities; 8, Contracts; 9, Foreign Corporations; 10, Regulation and Control; 11, Dissolution; 12, Railroad Companies; 13, Miscellaneous. Under head B, Municipal Corporations: 1, Powers; 2, Licenses; 3, Destruction of Private Property; 4, Municipal Debts; 5, Streets; 6, Counties; 7, Officers; 8, Miscellaneous.

It will thus be observed from the contents of this volume that the whole subject of corporations is exhaustively considered from the Federal standpoint. Taken alone, it is probably as valuable as any treatise on the law of corporations that can be obtained. The certificate as to cases rejected and not printed in full, is from Hon. Benj. Vaughan Abbot. He considers that the cases were judiciously and carefully selected and digested.

We are hardly able to express a higher opinion of this work than we have hitherto done in noticing the previous volumes. But it is perhaps sufficient to say that this volume sustains the excellent reputation which this series has already obtained. The law on the subject of Corporations should be read and understood by many outside of the Bench and Bar; and it is to be hoped that this book will extend far beyond these limits. We take pleasure in commending Meyer's Federal Decisions to the earnest consideration of the Bench and Bar, and of all who may in any way have occasion to refer to this law on the subjects treated in the series. The name of the Gilbert Book Co., St. Louis, Mo., as publishers, is a sufficient guarantee as to the manner in which the volumes are printed and bound.

Dr. John P. Gray on Insanity.

We have received a copy of a lecture of Dr. John P. Gray, superintendent of the State Lunatic Asylum in Utica, N. Y., on the subject of "Insanity and some of its Preventible Causes."

Dr. Gray's well-known reputation is a sufficient guarantee of the value of the lecture. His views are the result of long and varied experience on the treatment of the insane, which has made him the best authority on insanity in this country. We hope the lecture will be generally circulated.

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Supreme Court District of Columbia

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

AUGUST HERRING

vs.

THE DISTRICT OF COLUMBIA.

LAW No. 21,783.

Decided March 2, 1885.
The CHIEF JUSTICE and Justices MAC ARTHUR and JAMES sitting.

1. A municipality is not liable for damage to private property, occasioned by the accumulation of water within a square left below grade in making a public improvement.
2. In the process of public improvements, a municipality so raised the grade of certain streets as to leave the enclosed square below the new grade thus established, and turned a natural stream into a sewer in such a way as to leave the old channel exposed within the limits of the square. The owner of property within the square did not conform his premises to the new grade:

Held, That the municipality was not liable for damage to such property occasioned by the accumulation of water within the square, notwithstanding one of the streets crossed the old channel, and the raising the grade of that street destroyed a former culvert through which the stream had flowed.

STATEMENT OF THE CASE.

This action was instituted on April 2d, 1880, and was first tried at the October Term of the Circuit Court, resulting in a verdict and judgment in favor of the plaintiff. On appeal, that judgment was reversed by the court in General Term, and a new trial ordered. (See the report of the case, 2 Mackey, 87.) In the light of the opinion of the General Term, the declaration was amended by striking out so much thereof as counted upon alleged negligence in respect of a plan of sewerage adopted by the defendant in the premises. The case made under the amended declaration was as follows:

The plaintiff was the owner of a certain dwelling house and lots in square No. 616, in the city of Washington, through which square there ran, diagonally, a natural stream of water, flowing, by means of a culvert, through and under North Capitol street, the eastern boundary of the square. In the course of certain public improvements, the defendant caused the grade of O street, the southern boundary of the square, and on which the plaintiff's premises faced, to be greatly raised; whereby the plaintiff's premises were thrown below grade, and the falling rain water was drained thereupon. In addition, the defendant built along First street, the western boundary of the square, and thence eastwardly along O street, a large sewer, entirely above the level of the plaintiff's premises.

At some distance to the north of square 616, the sewer thus built was so constructed as to take in the natural stream at that point, so that the whole of the stream, except so much thereof as might be said to be between the last-mentioned point and the southeastern corner of the square, was taken into and carried off by the sewer. And, finally, in pursuance of the general plan of improvement, the grade of North Capitol street was also raised, and the culvert through which the stream had formerly flowed under that street was destroyed, the street being built solidly up to the new grade.

Along so much of the bed of the former stream as had been left (that is to say, along that part lying between the point at which the stream entered the sewer and the site of the former culvert at the southeastern corner of square No. 616), were several springs, and the ground sloped towards the former channel of the stream, so that the falling rain water ran down into it. By these means, a large quantity of water had accumulated at North Capitol street, where the culvert formerly was, and, backing up in the old channel, overflowed the plaintiff's premises, and entered the lower floor of his house, to a considerable depth at times.

For the damage thus occasioned, the plaintiff brought suit. It appeared in evidence that before building his house, he had ascertained the future grade, and had so built that the lower story of his house would serve as a basement when the street should have been raised to such grade; but after the new grade was established, he did not raise any one of his lots to conform thereto.

Under instruction by the court, the jury found for the defendant.

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BIRNEY & BIRNEY for plaintiff:

1. The defendant is liable, as having stopped a natural watercourse. After the building of the sewer and the raising of North Capitol street, the springs and the falling rain water continued to flow into the channel as before. This was a watercourse, according to all the authorities. Washb., Eas. & Serv. (2d ed.), 268, 272; 6 Wait's Ac. & Def.. 258, and cases; Angell on Watercourses, 126–141, and cases.

2. The result of the defendant's action in the premises was a direct invasion of the plaintiff's property. This is a taking within the meaning of the Constitution for which the plaintiff is entitled to compensation. St. Peter v. Denison, 58 N. Y., 423; Pumpelly v. Green Bay Co., 13 Wall., 181.

FRANCIS MILLER and HENRY E. DAVIS for defendant:

The defendant is not liable, as the damage was caused in the prosecution of a public improvement, involving change of grade of public streets. There is nothing in the case to take it out of the well-known general rule. The defendant rightly assumed that the plaintiff, and all other lot owners in the square concerned, would conform their premises to the new grade. If this had been done, the channel of the former stream at that point would have disappeared, and the damage occasioned the plaintiff would have been impossible. A public improvement which involves the utter annihilation of a stream, does not stop the stream in the sense in which a city is liable for damming a watercourse so as to flood the land of the citizen.

Mr. Justice JAMES delivered the opinion of the court.

In this case the plaintiff claims that the District of Columbia, in constructing a street which crossed a ravine, blocked up and stopped a waterway, thereby causing the formation of an extensive pond, which overflowed his premises. In his declaration he states two causes: first, that there was a natural stream fed by springs; and, secondly, that the same conduit at the bottom of the ravine was the waterway for the surface drainage. But he, finally, stood upon the latter ground, for the testimony showed that the spring stream had been diverted far above that by a sewer, and that, substantially, the watercourse spoken of consisted of the intermittent flowing of the surface water after it had drained down off the surface of the adjoining land into this stream bed.

He cited cases to show that the arresting of the flow of the natural stream, in cases of that kind, made the municipality responsible. Then he proceeded to argue that if there was a stream, formed, it is true, by surface water, there was no distinction between the two; that it was the arresting not of surface water, but of a stream. And he cited a case (Rose v. St. Charles, 49 Mo., 509) where the court had held a municipality responsible for arresting a stream which during part of the year did not flow. He also adduced a passage from Judge Dillon's work on Municipal Corporations, in which a doubt is expressed of the propriety of the ordinary rule when it was applied to the formation of a pond under these circumstances. But the author gives the cases in a foot note, remarking that the authorities thus far were rather the other way.

For the time that it flows this is a stream of water, but the whole circumstances are the result of the formation of a piece of land below grade, and although the flowage does thus accumulate at the bottom of a ravine, and does temporarily constitute a stream, we feel obliged to regard it as the method of action of surface water produced by the surface form of the land.

We do not, therefore, perceive any reason for holding the municipality for results which were caused primarily by the situation of the land below grade. It can hardly be said that the municipality has produced this injury, when an intervening fact occurs, namely, the situation of the land below the grade. If the owner of the land chooses to remain in that condition, he may lawfully do so, but he takes the consequences of his situation. We think, therefore, that these circumstances would not impose any liability on the part of the city when it comes to exercise its lawful power of making streets on a certain grade.

For these reasons we affirm the judgment.

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Marriage Settlements

"You shall know, sir," exclaimed Mr. Thornhill to his uncle, "I am no longer a poor dependent upon your favors. I scorn them. Nothing can keep Miss Wilmot's fortune from me, which, I thank her father's assiduity, is pretty large. The articles and a bond for her fortune are signed, and safe in possession. It was her fortune, not her person, that induced me to wish for this match; and possessed of the one, let who will take the other." The consummate miscreant, portrayed in the "Vicar of Wakefield," was doubly in the wrong. In point of law, the principles on which Essery v. Cowlard was decided would have deprived him of his vaunted gains; but, in point of fact, Ephraim Jenkinson had been too much for him, and the squire was married to Miss Wilmot already. But, where a marriage has already been consummated, what would be the effect as regards the settlements if they were executed under fraudulent inducements, but for which the marriage would not have taken place? To answer this Essery v.Cowlard (previously commented on: Vol. 18, p. 405) gives no assistance. Johnston v. Johnston (reported in *Law Times*) is in point. It is a decision of the English Court of Appeal, under whose notice all the previous authorities, not very direct indeed, were duly brought, including the Irish case of Hogan v. Healey (I. R., 11, C. L., 119, 11 Ir. L. T. Dig., 21), and the American cases of Pierce v. Pierce (27 Am. R., 22), Kline v. Kline (57 Penn. St., 120), and Taylor v. Richman (1 N. C., 278). But, in particular, a *dictum* of Lord Campbell's, in Evans v. Carrington (2 DeG. F. & J. 481), was brought under consideration—one sufficiently dubious indeed, which it is well to be able to read now by the light of a later decision. "We have no occasion," said he, "to consider what might be the effect upon a marriage settlement of clear proof that an unchaste woman had conspired with others, by fraudulent misrepresentations, to palm herself on a suitor as a virgin worthy of his choice." But, the conspiracy with others formed an essential element there, as indicated by Baggallay, L. J. And the actual decision was that non-disclosure of a woman's ante-nuptial incontinence was not a ground for setting aside a marriage settlement. And so, in the Irish case of Hogan v. Healey, the actual decision was that it is not competent to avoid a promissory note, given in consideration of a marriage which was afterwards solemnized, upon the ground of fraud practised during the marriage treaty. Fortunately, however, it has now become unnecessary to advert more at large to the many *dicta*, more directly bearing on the question at issue in Johnston v. Johnston, to be found embedded in the various previous decisions.

The plaintiff, who was the husband of the defendant Johnston, the other defendants being the trustees of their marriage settlements, and an infant interested thereunder, by his statement of claim alleged that a marriage between himself and the defendant Johnston (then a widow) being arranged for the 6th of January 1881, on the 4th of January, 1881, and previous to the execution of the deed thereinafter stated, the defendant Johnston stated to the plaintiff that her first husband had been divorced from her, and at her suit, by reason of his adultery and cruelty, and, further, that she had not cohabited or had any connection with her second husband before her marriage with him; and that such said statements were made by the said defendant to induce the plaintiff to celebrate his intended marriage with her and to execute the two indentures thereinafter stated. The plaintiff also alleged that, relying on the said representations and having full confidence in their truth, and in consideration of the marriage about to be solemnized, executed the two indentures thereinafter stated. The statement of claim, after setting out two indentures dated the 4th of January, 1881, by which certain property of the plaintiff was settled upon certain trusts in favor of the plaintiff, the defendant Johnston, and the issue of the marriage and other persons, further alleged that the marriage took place on the 6th of January, 1881; that there had been no issue of the marriage; and that the plaintiff had recently, and since the said marriage, discovered, and it was the fact, that the representations and statements made by the defendant Johnston to him were entirely false, to the knowledge of the said defendant, and that at the date of the said representations the defendant Johnston had been divorced from her first husband, at his suit, and by reason of her adultery with the gentleman who afterwards was her second husband. The plaintiff claimed (1) a declaration that the deeds were obtained by the defendant Johnston's fraud, and that the same might be cancelled and delivered up; (2) that the same defendant might be ordered to give up certain settled furniture; (3) costs; (4) general relief. This statement of claim, Pearson, J., struck out, on the ground that it disclosed no reasonable cause of action—holding that the husband could not get rid of the marriage settlement, executed by him antecedent to and in consideration of the marriage about to be solemnized, on any such ground as was

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alleged. The husband differed from Pearson, J. Admitting that there must be *restitutio in integrum* as far as possible, he was by no means baffled by the circumstance that the new status of the lady was irrevocable. Admitting that it would not have served his contention if she had merely falsely affirmed that she could play on the piano, the matter of adultery, he rather thought, entailed more serious consequences. And was it to be said that she was to be free from any penalty for her fraud, although, according to principle, and in all conscience, a fond man who hes found too late that women betray, should have some other mode of wringing her bosom than to die? "But can he set the whole settlement aside, and keep the consideration?" interjected Bowen, L. J. Not so, thought Baggallaly. Said he: "One cannot help seeing, at the very outset, that the sole consideration for the deeds which we are now asked to set aside cannot be returned. It cannot be made good to the lady between whom and the plaintiff the consideration was passed. That was the ground on which the learned judge decided the case. It appears to me that is a perfect and complete answer to the whole case alleged by the statement of claim. During a not very short practice in the court of chancery I have never heard of any such case as this. I have never known any case in which, a marriage having been brought about, a marriage settlement having been executed previous to that marriage, and that marriage settlement having been obtained by a fraudulent representation, it has been contended that, after the marriage had been entered into, the deed could be set aside. I know of no instance or case of the kind. Certain cases here, and in America, and in Ireland, have been alluded to, but they do not appear to me to have the slightest bearing on the point involved in this appeal." In fact, none of them that we can discover have gone quite so far as to justify the giving of such relief as was here sought by the gentleman who, as an intended bridegroom, had received, two days before his marriage, the singular piece of alleged deceptive information from the lovely widow, that she had not committed adultery with her second antecedent husband before the celebration of their intermarriage. He had tied the knot, and could not untie the settlement.—*Irish Law Times.*

THERE is no legal objection to making a policy of insurance the subject of a gift *inter vivos*, and everything has been done to make the gift effectual as against the donors.

Admission to the Bar of New York State.

Mr. William B. Ellison, writing from New York to the *Canada Law Journal*, under date January, 1885, says:

"It is a prevailing opinion in Canada that the examinations, when any are necessary to be passed in order to be admitted to practice in any of the United States, are not as severe as those to which students are obliged to submit themselves in the Canadian Provinces, and in this respect the impression is fairly founded, not so much, however, in respect to the State of New York as to the other States.

"But members of the Canadian bar and students for admission thereto have another and much more serious difficulty to overcome than the legal examination in order to secure the right to practice in New York State, and that is their citizenship, it being a condition precedent to admission to the bar of that State, that the applicant shall be a citizen of the United States, the conditions of which require, among other things, a declaration of intention to become a citizen thereof, and renunciation of allegiance to the country from which the applicant comes, and five years' continued residence within the United States.

"The question whether citizenship was or was not a prerequisite to admission under the laws of New York State was fully considered and passed upon in a late case in the court of appeals (the court of last resort in that State) reported in volume XC, p. 584 of the 'New York Court of Appeals Reports,' where the learned judges were unanimous in the opinion that citizenship was a prerequisite to admission to the bar of that State.

"The facts of the case appeared to be that a British subject had practiced as an attorney at law in England from 1875 to 1881. That upon proof of that fact, and upon satisfactory evidence of his character and qualifications, and upon proof of age, and of his having declared his intention to become a citizen of the United States, the supreme court of the State of New York, in the second judicial department thereof, on May 8, 1881, made an order admitting him to practice as an attorney and counsellor at law in the courts of that State. He so practiced from that date until the matter was brought before the General Term of said court, in said department, upon notice to all parties concerned, when the General Term made an order vacating its former order admitting him to practice, on the ground that the said court had no power or jurisdiction to grant the formal order, and his name was thereupon stricken from the roll; whereupon he appealed to the court of

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appeals, which court affirmed the order of the court below, revoking his license.

"But granting that all the difficulties of admission have been overcome, the prospects are by no means the most brilliant, the competition being much more severe than in Canada. Take New York city, for instance, with nearly 6,000 lawyers, almost all of whom are natives of the State, familiar with the ways of the people, and have the advantages of extended business and social connexion and acquaintanceship conducive in a great degree to the acquisition of clients.

"Many Canadians are prone to think that to locate in New York means assured success. Let not the young men of Canada deceive themselves; they will find at the bar of that State many hard-working, energetic, capable lawyers, men who devote their time both early and late to the continuous and well-directed prosecution of their profession, so many in fact, and so well directed their efforts, that the competition there is most intense.

"New York State undoubtedly presents some advantages in a pecuniary sense to the practitioner of the law, inasmuch as his compensation is entirely the subject of contract, expressed or implied between himself and the client, and not at all subject to taxation by the taxing officer, who has simply the taxation of costs, as between party and party. This has the effect of creating absolutely no limit or criterion upon which compensation may be based; but as an attorney or counsellor becomes known for his ability, and conspicuous in his profession, his clients not only increase in number but his scale of compensation also increases. In a case where no contract has been made for services, the extent of the compensation depends upon the nature of the services, amount involved, and the position in the profession occupied by the counsel or attorney. The scale of charges is much higher in New York thnn in Canada, but so is the cost of living and expenses incidental to business, but the increase in compensation is higher proportionately than in the expense of living.

"New York presents much to attract the man who has fair ability and more than average health and energy, there being no limit to the results to be achieved in the extent of business obtained or the compensation thereof. He with good health, honesty and well-directed labor, continuously applied, may rise above the average, and get beyond the strong current of competition, and then enjoy the fruits of his labor, if such labor has not, as in so many cases it has done, left a ruined constitution, a physical and mental wreck. If a man justly feels that he has some merits which will enable him to outstrip the generality of men, New York affords him opportunities no other place on this continent does to realize and reach the height of his ambition; but in the middle walks of professional life, the intense competition therein, caused by such vast numbers struggling in those paths, makes the rewards of toil small, considering the necessarily unceasing efforts."

Common Pleas of Dauphin County, Penn.

R. R. SISK & Co. *vs.* H. O. KENYON & Co.

Practice—Foreign Attachment—Garnishee—Rule to show cause of action.

The garnishee in a foreign attachment to which the defendant has appeared, will not be permitted to interfere, and require the plaintiff to show that he has a real cause of action.

April Term, 1882. No. 223.

Foreign attachment.

Rule to show cause of action, etc.

Opinion by MCPHERSON, A. L. J. March 24, 1885.

On April 18, 1882, this writ of foreign attachment was issued, and service was duly made upon the garnishee. On November 14, 1882, the defendants entered an appearance by attorney, and the cause remained in this condition until January 14, 1885, when the garnishee obtained the present rule. The plaintiffs ask that the rule be discharged for two reasons.

1st. Because of the garnishee's delay; and

2d. Because the defendants have appeared and do not join in the application.

It is not necessary to express any opinion upon the first of these reasons, since we believe the second to be sufficient.

Usually, a rule to show cause of action is asked for by the defendant, and in ordinary suits there is, of course, no one else upon the record by whom the motion can be made. In foreign attachments, however, the nature of the proceeding is such that great injustice might be done to an absent defendant if a groundless attachment could not be disturbed until after he received notice that a levy had been made. Moved by this consideration, our courts permit the garnishee to interfere and to protect the interest of the absent defendant by requiring the plaintiff to show that he has a real cause of action. But it seems to us that the reason for this permission ceases where the defendant has himself appeared. He is then able to protect himself, and if he does not object to the plaintiff's right to sue,

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we do not see upon what ground the objection can still be raised by the garnishee. The practice of calling upon the plaintiff to show his cause of action was adopted to prevent the defendant from being oppressed either in his person or his property; and if he is in a situation to take care of his own interest in this respect, and does not avail himself of the practice, the right must be taken to be waived. If the garnishee is harassed by the attachment, and makes out a proper case for the interference of the court, he can still be relieved in another way.

The point now decided has not anywhere distinctly arisen, so far as we have been able to discover, but the conclusion we have reached is clearly intimated in the reasoning of Judge Sharswood in Morris v. Turner, 3 Clark, 425, where it is said of a garnishee, asking for a rule like this, that "he has no personal interest in the preliminary proceedings to ascertain the debt, and is permitted to intervene *only to protect the interest of the absent defendant.*"

The rule must be discharged.

THE PROPER instructions to be given in the case of an action for negligence on the part of a master in retaining an unfit servant after knowledge of his unfitness, was discussed in Hilts v. Chicago and G. T. R. Co. (21 N. W. Rep., 878), and the following points were ruled:

A master who retains an incompetent servant in his employment after knowledge comes to him of the unfitness of the servant for the service in which he is engaged, or of whose unfitness he might have known by the exercise of due diligence or ordinary care, is liable for injury to another servant caused by the negligent acts of the incompetent servant.

If a railroad engineer was addicted to the habitual use of intoxicating liquors to such excess that his intoxicated condition was observed by employees and others coming in contact with him for a period covering several months of time before an injury to an employee of the company, caused by reason of his intoxication, and if, by inquiry, the officers of the company during that time would have discovered his unfitness for the position of engineer by reason of his habits, the omission to make inquiries or to observe his condition would be negligence as culpable as if they had employed a notoriously incompetent engineer without inquiry.

No definite rule can be laid down as to what length of time must elapse, where actual notice is not shown, to charge a railroad company with negligence in failing or neglecting to ascertain the habits of its employees with reference to drinking intoxicating liquors to excess. If they exercise due care and diligence in seeing that their employees are competent, careful and sober, and fail to discover any vicious habits, they cannot be held liable for negligently retaining incompetent men.

Where it is shown that an accident occurred through the negligent act of an engineer who was in an intoxicated condition, and that he had been in the habit of drinking to excess for a period of nine months while in the employment of the railroad company, and no actual notice or knowledge ever reached any superior officer of the engineer, a jury will be justified in finding that the company was negligent in failing to learn such habits and in retaining the engineer in their employment.

Interesting Decisions.

A manufacturing company prepared corn meal for food for foreign markets, and for many years had put up the meal in packages and designated the product "Maizona," and also put on the packages an allegorical picture showing the cultivation of corn, and the preparation and cooking of the meal by the Indians. Both the term and the picture were duly registered in the Patent Office on December 6, 1881, under the provision of the act of Congress of March 3, 1881. The corporation, or its predecessor in business, was the originator of these trade-marks, had used them for many years, and had a common law title to them before the defendant undertook to use in his foreign trade the word or picture registered by him on December 5, 1882, which was the term "Maizharina," and a picture of a man carrying a quantity of maize in his arms. The packages of the defendant were quite similar in form, color, size, printing, and in other respects. A suit was brought for an injunction and damages on the infringement of the trade-mark, and a motion for a preliminary injunction, because the violation of the right was apparent. The defendant claimed that there was not a sufficient resemblance. In this case (Glen Cove Manufacturing Company), brought in the United States Circuit Court for the Southern District of New York, the motion was granted. Judge Wallace, in the opinion, said: "1. As used by defendant, it seems clear that his devices were simulated to appear to be those of the complainant, and if the case turned on the principles which obtained ordinarily in equity when the use of a common law right of property in a trade-mark is the subject of contro-

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versy, it would be the duty of the court to order an injunction, for there is enough deceit shown upon the public to call for that. But in this suit we must be controlled by the statute. The defendant has artfully garbled and draped a word used by him bearing a close resemblance to complainant's word, so that its identity is rendered more indistinguishable from that of the complainant's than it is intrinsically. If the granting of the injunction depended upon the similarity of the sound of the words, we should be justified in giving it under the standing decision—thus 'Cocoine' has been held to infringe 'Cocaine,' 'Bovina' 'Bovoline,' 'Appolinus' 'Appolinaris,' 'Hostetler' 'Hostetter.' 2. The defendant claims that the granting of the trade mark by the Patent Office is a judicial determination and conclusion between the parties. But it is a sufficient answer to this proposition that the act of Congress makes the registration of a trade mark only apparent evidence of ownership. Neither the complainant nor the defendant could maintain its trade-mark against one having a common law title, nor as against each other."

Stare Decisis.

The following dictum of Mr. Justice Kay is deserving of more notice than it has so far received. In re Chapple, Newton v. Chapman (51 L. T. Rep., N. S., 748), his Lordship is reported to have said: "I always struggle against being bound by authority, unless the principle upon which the authority proceeds commends itself to my judgment." If this simple plan of treating previous decisions is followed by other judges, the "glorious uncertainty" of the law will rapidly become such that law in its modern sense will tend to disappear, and a system of what may be called decision in accordance with the judge's subjective view of natural equity will replace it. With all deference to the learned judge, we must protest against this theory that the authority of a decision depends on whether or no its principle approves itself to any particular judge who has to administer the law subsequently. If any unpaid magistrate or county court judge had used similar phraseology, and the case with respect to which the remark had been made had come before the High Court, there would probably have been some expressions of disapproval from the court. Much of the law of England depends on cases the principles of which could not possibly find approval at the present day. Still more is founded on facts of mediæval life and factors in mediæval thought that have long ago disappeared. Is some bold follower of a new school of case-rejecting judges to alter the law of primogeniture because the feudal system has now disappeared, or are we to have the doctrines of "a double possibility" and the impossibility of the existence of "a use upon a use" again doubted? Again, we must say, as we have done before in commenting on a recent decision of Mr. Justice Kay's, we are not now quarrelling with his decision, which was on the construction of a will. You cannot always test a testator's expressed intention by considering how far his phraseology agrees with or differs from previous testators—"You cannot construe one man's nonsense by another man's nonsense." But these terribly unguarded dicta really require some observation.—*London Law Times.*

Trial Rules.

Chief Justice Curtis, of Boston, gave hints as a basis for the following trial rules that are not so generally known as they should be, and yet they very forcibly apply to criminal defences:

1. Pay little attention to the good side of the case at first, that side will take care of itself, but be sure you look well to the bad side—not forgetting to explore the strongest form of the proof, and knowing that an opportunity to prove even what is false may be used by your adversary, unless you have certain means to refute it.

2. Never try to disprove what has not been proven, and supply thereby the missing link in the enemies' chain of evidence.

3. Never forget that an innocent person, with enemies, may be in a more dangerous condition than a guilty one with friends and influence.

4. The pulse of the people beat nearest together through the columns of the press, and a few wicked papers may tell a jury much in half hour accounts of an occurrence that will shade the whole story with a jury.

5. Persistent energy in the face of genius and eloquence will bear its fruit in due season if properly directed, but endless travel in the wrong direction will never reach the place of destination; therefore, of all things, be safe in pour theory and start out equipped for a trial of hardship. Chas. S. May says:

"The best trial rule I can think of is for the advocate first to possess himself thoroughly of the facts of his case, and to believe in its justice; and then to keep in mind in every step of its progress that the jury is composed of men representing the average common sense and moral sense of the people, actuated by an honest desire to do impartial justice between the parties; and so, in the

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light of this fact, to be able to see how every proposition or objection, piece of testimony, remark at the bar or observation from the bench would be likely to affect such a body; in other words, for the trial lawyer to imagine himself in the jury box, with their purposes and intelligence, and thind how these things would be apt to influence him."

WHAT contemptible questions the law is compelled to stoop to is illustrated in the case of Le May v. Welch, 51 L. T. Rep. (N. S.) 867, where the court of appeals gravely sit in judgment on the shape of a "dude" collar, on a charge of infringement of patent. Baggallay, L. J., says: "Here is a collar of particular shape, which the plaintiffs call the 'Tandem Collar.' It is a collar which encircles the neck, as all collars do, but it has no band like the old-fashioned collars. It has a stud-hole at the bottom, leaving a considerable amount of space above, not only up to the line where the collar encircles the neck, but a broad rim before there comes a cut in the collar, which cut has been referred to very much. It has been called a segmental cut. A more correct way of describing the collar would be 'an all-round collar,' having a wedge-like form cut into it," etc. And two other judges also express opinions on the momentous question of novelty of invention. —*Albany Law Journal.*

A DETROIT paper relates an incident in a recent trial that is instructive. It was a suit for breach of a yearly salary contract, not in writing, but continued some three years, broken in the last half by employer. During the trial the judge raised the question whether the statute of frauds might not apply, and was about to take the case from the jury when plaintiff's counsel quoted Chief Justice Coleridge's words in New York, to the effect that "American judges of to-day were too often like the English courts of half a century ago, who seemed more anxious to find a technical defect that would delay and prolong litigation, than to direct a trial as to bring about substantial justice." The paper adds: "The judge gave the case to the jury who stood eleven for plaintiff and one stood out. It was well worth a trip across the Atlantic to tell that stubborn truth, and a few such eye-openers by fearless men would benefit many trials."

THE POWER of the State to wind up corporations when insolvent or mismanaged, and their freedom to do this notwithstanding the doctrine of the inviolability of contracts, is well sustained and illustrated in the recent decision of the Supreme Court of the United States in the case of the Chicago Life Insurance Company v. Needles (October Term, 1884), where the Supreme Court held that a statute for this purpose, not containing anything irregular or unreasonable in its character, nor otherwise than promotive of the interests of all concerned by guarding only against mismanagement and misconduct, cannot be deemed to impair the obligation of the contract of the State with the corporation, nor any contract which the company had made with its creditors and policy holders.

Civil Service Rules.

Frank Fox, who was appointed attendant in the Eleventh District Civil Court by Judge Dessar, applied for a mandamus to compel the Comptroller to pay his salary for the month of January. The money had been withheld because Fox had not been examined for the position under the Civil Service rule. Judge Donohue granted the mandamus, saying that, as the party seeking payment was in the office performing its duties, and no one claimed the office but himself, the title could not be attacked in that way. It was clear, too, that the court making the appointment had never received the notice prescribed by the Civil Service law.—*N. Y. Daily Register.*

NOT A CONTINUOUS GUARANTEE.—Solomon M. Schwartz and Samuel Jerkowski sued Joseph Hyman in the Supreme Court of New York, as guarantor, for goods sold to Jacob Posner. Hyman wrote to plaintiffs in 1879: "Be kind enough to send Jacob Posner a full line of samples, of course suitable for spring and summer, at the lowest figures, and I will guarantee the payment of any goods you may sell him. Hoping you will comply with my request and attend to it at once." Posner paid for all the goods he purchased until 1883, and for goods sold during that year, this action was brought. Judge Barrett, on the trial, held that this was not a continuous guarantee, and gave judgment for the defendant.

Corporation: Purchase of Capital Stock; Replevin for Corporate Property.—One who, by purchase or otherwise, becomes the owner of all the capital stock of a private corporation, does not thereby become the legal owner of its property and cannot maintain replevin therefore in his own name. [Button v. Hoffman, S. C. Wis.; 19 C. L. J., 474.]

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THE recent decision of the English court in the Queen's Bench Division in the case of Baines & Co. v. Toye (July, 1884), is reported in 51 Law Times R., N. S., 292, the point being, that in an action for necessaries furnished to an infant, the fact that the infant was already sufficiently supplied with such articles is material against the plaintiff, although it had not been communicated to the plaintiff.

The difference of opinion, however, between the judges indicates that the question may, perhaps, still be regarded as an open one.

"In Chancery."

It is to be hoped that Prince Albert Victor before he has been long a member of an Inn of Court will be able to to modify the rather gloomy view of the meaning of the words "in Chancery" which he has gathered as an apt student of "Bleak House." Writing of a drive through the wilds of Australia, the royal midshipmen say: "In many places we drive as through an open English park, only it is a park *in Chancery*, with the trees fallen and dead and the stumps protruding here and there, and pools uncared for, and the grass growing by their sides, dark and lank." "In Chancery" in its opprobrious sense is, like "drunk as a lord" and other phrases, a survival historically embedded in the language, useful perhaps as marking progress, but happily recording a fact some time past and gone. —*Law Journal.*

THE Manhattan Life Insurance Company has a queer case on hand of a man who wants a life policy declared void to spite his sister. The policy was taken out twenty-five years ago, without his knowledge or consent, by his father for the benefit of his sister, and since the death of the former, in 1879, the latter has paid the premiums. The insured insists that his sister has no insurable interest in his life, and is willing to pay the company all it will have to refund her, but he wants the policy cancelled. It is an interesting question which the courts will have to answer.

NOTES OF RECENT DECISIONS.

Mandamus: Public Officer; When does not Lie.—The principle is too firmly established to be questioned that where a public officer is invested with discretionary power concerning the performance of a public duty required at his hands, or wherever in determining the course of official action he is called upon to use official judgment and discretion, his exercise of them in the absence of bad faith, fraud, and gross abuse of discretion, will not be controlled or directed by mandamus. [Free Turnpike Co. v. Sandusky County, 1 Ohio St., 149; State ex rel. Anderson v. Holmes County, 17 Id., 608; Lake Co. v. Ashtabula Co., 24 Id., 393, 401; Moses Mand., 78; High Ex. Rem., § 24; United States v. Seaman, 17 How., 225; State v. Moore, S. C. Ohio.]

Injunction: Reading the Bible; Religious Songs; Compulsory Attendance of Scholars; Constitutional Law; Reading the Bible in Public Schools; Code.—Unless it is shown that the children or wards of a parent or guardian are compelled to be present at the exercises of the public school of which they are scholars, at which the Bible is read or repeated, or religious songs are sung, an injunction to restrain such reading or repeating or singing will not be granted. The provision of the code (§ 174) that "the Bible shall not be excluded from any school or institution in the State, nor shall any pupil be required to read it contrary to the wishes of his parent or guardian," is not unconstitutional, as in contravention to the Bill of Rights with relation to public worship. [Moore v. Monroe, S. C. Ia; 18 Rep., 616.]

Estoppel by Contract: Corporate Capacity; Pleading.—A party who contracts with a corporation, as such, is thereby estopped, in an action on such contract, to deny its corporate existence or power to make such contract; but in case such want of existence or power is pleaded as a defense to such action, the corporation must claim the benefit of the estoppel on the record, or the same will be considered waived. [Oregon R. R. Co. v. Oregon R. & N. Co.; U. S. C. C. Dist. of Oregon, Dec. 1, 1883.]

Pleading: Plea to Suit on an Award.—Where matters in dispute were submitted to two arbitrators under a written agreement that they might call in a third party if they failed to agree, and they did call in a third party, and two of the three made an award, in in action of assumpsit upon the award, the defendant pleaded that after the third party was called in to participate in the decision, they, nor either of them, ever appointed any time for hearing the defendant, or his witnesses, or proofs touching the matters referred to them, nor did they afford the defendant any opportunity to be heard; and that the third man so selected signed the award without hearing the defendant or hearing any evidence: *Held*, no error in overruling a demurrer to the same. [Max Alexander et al. v. James A. Cunningham. Filed at Ottawa, Ill., Nov. 17, 1884.]

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Evidence: Dying Declarations.—(1) To be admissible in evidence, dying declarations must relate to the identification of the prisoner or the deceased, or to the act of killing, or to the circumstances attending the act and forming part of the *res gestæ*. Hence, where the declaration was: "I believed he (defendant) was going after his pistol when he went into the house . . . I had seen him at the house with a pistol before," *held*, that this ought to have been excluded. State v. Draper, 65 Mo., 335; Collins v. Com., 12 Bush., 271; State v. Wood, 53 Vt., 560; Whart. Crim. Ev., § 278; 1 Greenl. Ev. (14th ed.), 210, note; Id., § 159. (2) Dying declarations are in the nature of secondary evidence, and are so regarded in the law. It is, therefore, error to instruct a jury to give them the same weight they would if the declarant had testified before them. State v. McCanon, 51 Mo., 160; Walker v. State, 37 Tex., 365; Lambeth v. State, 23 Miss., 358; Whart. Crim. Ev., § 276; Roscoe Crim. Ev., 36; 1 Greenl. Ev., § 162; disapproving, Id., 157; State v. Green, 13 Mo., 382. [State v. Vansant. Opinion by Hough, C. J. 80 Mo.]

Railroads; Stop Over Tickets; Negligence of Conductor; Damages.—A passenger who, through the negligence of one conductor, is not furnished with a stop-over ticket to which he is entitled, and who, on attempting to resume his journey after a stop, is required by a second conductor to pay additional fare or leave the train, may elect to leave the train, and in that case may recover from the railroad company, not merely the amount of the additional fare which he is subsequently obliged to pay in order to reach his destination, but all damages sustained by him as the direct and natural consequence of the fault of the first conductor. [Yorton v. Ry. Co. S. C. Wis. 21 N. W. Rep., 516.]

Seaman's Wages: Advance Wages Under Act of Congress, June 26, 1884.—The act of June 26, 1884, forbidding advances of wages to seamen, is not applicable to the shipment of seamen in foreign ports. [The State of Maine. U. S. Dist., S. D. N. Y. Dec. 31, 1884. 22 Fed. Rep., 734.]

Contract.—When one party to an executory contract voluntarily puts it out of his power to perform it, the other party may treat it as terminated, and sue to recover whatever damages he may have sustained through its non-performance. [Reusens v. Mexican, etc. U. S. C. C., S. D. N. Y. 20 C. L. J., 34.]

The Courts.

U. S. Supreme Court Proceedings.

APRIL 6, 1885.

No. 10. Original. Ex parte. In the matter of Dayton S. Morgan et al., petitioners; petition for writ of mandamus denied. Opinion by Mr. Chief Justice Waite.

No. 988. J. H. Kirkpatrick v. C. C. Baker; motion to dismiss denied. Announced by Mr. Chief Justice Waite.

No. 1149. Joseph W. Dyer et al. v. Natural Steam Navigation Co.; ordered for reargument with No. 636 on second day of next term, after cases already assigned for that day.

Order: The reporter having represented that, owing to the number of decisions at the term, it will be impracticable to put the reports in one volume, it is therefore now here ordered that he publish an additional volume in this year, pursuant to section 681 of the Revised Statutes.

No. 238. The Memphis & Little Rock Railroad Company (as reorganized) v. The Southern Express Company;

No. 260. The St. Louis, Iron Mountain & Southern Railway Company v. The Southern Express Company; and

No. 321. The Missouri, Kansas & Texas Railway Company v. W. B. Dinsmore, President Adams Express Company; on motion of Mr. John F. Dillon, reassigned for argument on the first Monday in November next at the foot of the call.

No. 279. E. S. Wheeler & Co. v. The New Brunswick & Canada Railroad Company; on motion of Mr. E. J. Phelps, assigned for argument on the 16th of April next at head of the call.

APRIL 13, 1885.

Squire L. Pierce, of St. Paul, Minn.; C. Ridgely Goodwin, of Baltimore, Md.; William H. Keep, of Chicago, Ill., and W. L. O'Neil, of Galveston, Tex., John W. Alling, of New Haven, Conn., Chauncey B. Ripley, of New York city, and Ludlow Ogden, of New York city, have been admitted to practice.

No. 207. The East Alabama Railway Company v. John Doe, ex dem., Daniel W. Visscher et al.; judgment reversed with costs and cause remanded with a direction to grant a new trial. Opinion by Mr. Justice Blatchford.

No. 218. Bartlett Doe v. Henry C. Hyde, assignee, etc.; decree affirmed with costs. Opinion by Mr. Justice Blatchford.

No. 936. John V. Weaver et al. v. Spencer Fields, Sr., et al.; decree affirmed with costs. Opinion by Mr. Justice Blatchford.

No. 156. Francis Dodge et al. v. Thomas Knowles; appeal from the Supreme Court of the District of Columbia; decree reversed with costs, and cause remanded with directions to dismiss the bill with costs. Opinion by Mr. Justice Gray.

No. 191. Normon H. Pollock v. The Bridgeport Steamboat Company, claimant, etc.; decree affirmed with costs. Opinion by Mr. Justice Harlan.

No. 229. The State National Bank of Boston v. The United States; appeal from the court of claims; judgment affirmed. Opinion by Mr. Justice Harlan.

No. 73. The Knickerbocker Life Insurance Company v. P. H. Pendleton et al.; writ of error amended and new citation ordered.

No. 169. The Steamship Belgenland, etc., et al.,

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v. Theordore Jensen, master, etc ; decree affirmed with costs and interest. Opinion by Mr. Justice Bradley.

No. 220. Delerizo A. Walder v. Sherman W. Knevals; decree affirmed with costs. Opinion by Mr. Justice Fields.

No. 221. The Penn National Bank v. James T. Furness et al.; decree affirmed with costs. Opinion by Mr. Justice Field.

No. 185. The Gloucester Ferry Company v. The Commonwealth of Pennsylvania; judgment reversed with costs, and cause remanded to the said Supreme Court for further proceedings to be had therein in conformity with the opinion of this court. Opinion by Mr. Justice Field.

No. 974. Henry Amy et al., etc., v. Lhe Taxing District of Shelby County et al.; decree affirmed with costs. Opinion by Mr. Justice Miller.

No. 703. Jose Aurrecoechea v. Amos S. Bangs' administrator;

No. 258. Jose Aurrecoechea v. Duncan Sinclair et al.;

No. 1014. Jose Aurrecoechea v. Joseph L. Bangs;

No. 1015. Jose Aurrecoechea v. George Gerke;

No. 1016. Jose Aurrecoechea v. John W. Clarke;

No. 1017. Jose Aurrecoechea v. Earl B. French; judgments affirmed with costs. Opinion by Mr. Justice Miller.

No. 223. The Boatmans' Savings Bank v. The State Savings Aassociation of St. Louis; dismissed for the want of jurisdiction. Opinion by Mr. Chief Justice Waite.

No. 237. The United States v. Wm. J. Petit. alias Wm. George; on certificate of division in opinion between the Judges of the United States Circuit Court for the Eastern district of Missouri; first question certified answered in the negative, and the second in the affirmative. Opinion by Mr. Chief Justice Waite.

No. 245. F. W. Zeperluck et al., assignees, etc., v. Joseph P. Card et al.; judgment affirmed with costs. Opinion by Mr. Chief Justice Waite.

No. 733. Albert Grant v. The Phœnix Mutual Life Insurance Company; motion for new supersedeas bond denied. Opinion by Mr. Chief Justice Waite.

No. 1284. Richard B Chapman v. Edward K. Goodnow; motion to dismiss postponed to hearing with the case on its merits. Announced by Mr. Chief Justice Waite.

No. 900. The Utah & Northern Railway Company v. Wm. F. Fisher, assessor, etc.; motion to advance granted and cause assigned for argument on the second day of next term after cases already set down for that day. Announced by Mr. Chief Justice Waite.

No. 1253. Howard C. Chapin v. James Streeter; motion for leave to docket case granted upon payment of costs. Announced by Mr. Chief Justice Waite.

SUPREME COURT OF THE DISTRICT OF COLUMBIA GENERAL TERM.

April 13, 1885.

Washington Beneficial Endowment Association v. Wood. Decision below affirmed.

Hewitt v. Lewis Decree of special term affirmed.

Strong v. District of Columbia. Argument resumed.

April 14, 1885.

United States v. Frank Miner. Appeal withdrawn.

Mason Richardson appointed examiner in chancery.

Strong v District of Columbia. Argument resumed.

April 15, 1885.

Same. Argued and submitted.

Hamilton et al. v. Morrison. Appeal bond approved.

In the matter of Philip S. Wales for petition of habeas corpus Appeal to the Supreme Court of the United States granted

Fisher v. Hume. Argument begun.

April 16, 1885.

Same. Argued and submitted.

Morris v. James et al. Argument resumed.

April 17, 1885.

Same. Argument concluded and case submitted.

IN EQUITY.—New Suits.

April 11. 1885.

9391 Ellen M Boggs v. George F. Green et al. To execute trust. Com sol, C. M. & H. S. Matthews

9392 Frank T Browning v. Joseph Williams et al. Judgment, creditor's bill. Com sol. F. T. Browning

April 13, 1885.

9393. Henry B. Otterback et al v. Benjamin L Otterback et al Trustees in lieu of deceased's executors

9394 Rachel Allston v. Philip C Allston. Divorce. Com sol, J Ambler Smith.

9395. Eliza C Jackson v Elizabeth L. Jackson et al. To confirm sale. Com sols, Edwards & Barnard.

9396. Francis P Donnelly v. Ann Donnelly. For divorce Com sol, C. Pelham.

April 14, 1885

9397. Wilhelmina Irvine v. William Irvine. For divorce. Com sol, J. G. Bigelow.

9398. Mary M. Pollard et al. v. Martha A. Carroll. Partition by sale. Com sols. Carusi & Miller.

9399 Wm. McLean et al v. Joseph E. Roberts et al. Judgment, creditor's bill Com sols, Newton & Berryman.

9400. Cent. Nat. Bank v. Wm. G Partello. Judgment, creditor's bill. Com sols, Edwards & Barnard

April 15, 1885.

9401. Robert Proctor v. Nathan W. Fitzgerald et al. For injunction. Com sol, D. O'C. Callaghan.

9402 Mary S. Lambell et al v. Rosa M. Evans et al. Partition. Com sols, Hagner & Maddox.

April 16, 1885.

9203 Winnie C. Judson v. Lucius O. Judson. For divorce. Com sol, Chas. S Hine.

9404 Fredericka A Peck v. George W. Peck. For divorce. Com sol, T. J. Mackey.

April 17, 1885.

9405 John G. Killian v, Alice B. Killian For divorce Com sol, Wm. A. Cook.

CIRCUIT COURT.—New Suits at Law.

April 13, 1885.

26087 French Whitecotton v The B. & O. R. R. Co. Damages. $1500. Piffs attys, Heald and Birney.

26088 Same v. B. & P. R. R Co Damages, $1000 Piffs attyg, Same.

26089 Samuel E. Lewis v. John A Hayward. Acct., $149 96 Piffs atty, W. F Mattingly

26090. Benjamin Davis v. Joseph A Gamble. Note, $600. Piffs atty, J. J. Wilmarth,

April 14, 1885.

26091. Homer Colladay & Co. v. John T. Mitchell. Notes. $1052 61 Piffs atty, C. C. Cole.

26092. E. Clinton & Co. v. Ambrose D. Bagby. Note, $66 50 Piffs atty, Mills Dean

26093 Barbour & Hamilton v. John F. Weeden. Acct., $570 54. Piffs atty, L. C. Williamson

26094 Same v. William M. Hodgson Acct, $643.85. Piffs atty, Same

26095. A. & H Myers & Co v. Thomas L. House. Note, $230 Piffs atty, Fred W. Jones.

26096 George H. Morrill & Co. v The Evening Critic Publishing Co., of Washington, D. C. Bill of ex, $528.90. Piffs atty, E. B. Hay.

26097 Eliza C Hutchinson v. D. W. Middleton et al, Acct, $115,601.27 Piffs attys, Webb and Totten.

26098. J. F. Manning & Co. v. Dilier B. Groff. Note. $115. Piffs atty, J J. Darlington.

26099. Wm. C Murdock v. Carrie B. Evans, adm'x. Acct., $1004 61. Piffs atty, C. C. Cole.

April 15, 1885.

26100 Lewis Johnson & Co v. Isaac Gibbs et al. Notes, $150. Piffs attys, Carusi & Miller.

26101 Same v. Elson T Wright et al. Note, $306 42. Piffs attys, Same

26102 Same v. Joseph Daniels et al Notes, $149. Piffs attys, Same.

26103. Walter S. Griffith v. Newton Rule. Replevin. Piffs atty, W. T Bailey.

26104 John M. Dove v. Thomas W. Bartley. Acct., $10 28. Piffs attys, H O. & R. Claughton.

26105. R. O. Polkinhorn v. The Hatchet Publishing Co. Note and acct, $455.90. Piffs attys, Edwards & Barnard.

26106. Cooper, Jarvis & Darke v. Jesse Brown. Acct., $114.52 Piffs atty, E. B. Hay.

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April 16, 1885.

26107. Elizabeth M. De Camp v. Henry Coleman. Certiorari. Deft atty, G. E Harris.

26108. Robert O. Holtzman v. Charles H. Miller. Judg't of Justice Hall, $51.25.

April 17, 1885.

26109 Wilson & Gartlrnd v. Michael A. McGowan. Acct, $20,045.89 Plffs attys, Cook and Clarke.

PROBATE COURT.—Justice James.

April 17, 1885

Estate of John Ashley Petition of Isabella Ashley for an order on the administrator to pay over certain money filed, and commission issued to take testimony.

Estate of Francis A. Lutz. Exemplied copy of will filed.

Estate of Isabel Leonard Petition of Antoinette Russell that the will be admitted to probate filed. Order of publication

Estate of John Beck. Will admitted to probate, and executors directed to qualify in bond of $8,000.

Estate of Mary Ann Hagan Order appointing Michael J Keane administrator. Bond at $200

Estate of Laura O. Taylor Letters to Georgeanna C. Bird Bond, $3,500.

Estate of Samuel T. Crown. Letters to Wm. S. Crown. Bond, $450

Estate of Chas. L. Boarman. Citation issued against executrix.

Estate of Jenkin Thomas. Letters to Wm. R. Deeble. Bond, $3,200.

In re David B. and Frederick W. Bell. Order appointing Harriet E. Bell guardian.

Estate of Mary E. King. Letters to George W. King. Bond, $1,000

Estate of Ellen J. King. Same order,

Estate of Charles A. Kimball. Letters to Obadiah Kimball. Bond, $270.

In re Carlos and Emma Carvallo. M. Emma Carvallo bonded as guardian.

Estate of W H. Winsor. Letters to Solomon F. Faunce. Bond, $1,500.

Estate of Henry H Garrett. Letters to Charles C. Mothershead Bond, $500

Estate of Edward W. Spedden. Letters to Isaac L. Johnson Bond, $3,000

Estate of Sarah J. Chipman Order appointing A. S. Taylor guardian to U. G. Chipman. Bond, $2,000.

Will of Ann Randour filed for probate.

Estate of Emanuel B Caton. Letters to John P D. Caton

Estate of William Drane. Letters to Eliza Ann Drane.

Estate of B. K. Morsell. Letters to C. E. Creecy. Bond, $500.

Estate of James L Gates. Letters to same. Bond $200.

Estate of L B. Cully. Proof of publication filed.

Estate of Henry Nash. Letters to C. E. Creecy. Bond' $500

Estate of Catharine Hill. Letters to Joseph F. Hodgson. Bond, $1,500.

Estate of James Read, Order appointing Richard Aderson administrator Bond, $1,500.

Estate of Henry Yeatman. Letters to C. E. Creecy. Bond, $500

Estate of W. H. E. Ourand. Letters to same. Bond $500.

Estate of Wm. E. Dunn. Letters to same. Bond, $500

Estate of Chas. W. Owens. Letters to same. Bond, $500.

Estate of Jane Rutledge. Administrator ordered to furnish new bond.

Estate of Nathan A. Fuller. Letters to Augusta G. Fuller. Bond $400.

Estate of Robert Stewart. Letters to John Stewart. Bond $1,000.

Estate of Elizabeth Jones. Order of publication issued.

Estate of Wm. B. Grove. Letters to Wm. E. Abbott. Band, $10,000.

Legal Notices.

THIS IS TO GIVE NOTICE:

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Mary Ann Hagan, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of April next: they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of April, 1885.

MICHAEL J. KEANE.

HANNA & JOHNSTON, Solicitors. 16 Administrator.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. April 17th, 1885.

In the matter of the Estate of Isabel Leonard, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament of the said deceased has this day been made by James B. McCrellis, attorney for Antoinette Russell.

All persons interested are hereby notified to appear in this court on Friday, the 8th day of May next at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to Probate and record as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B. HAGNER. Justice.

Test: 16 H. J. RAMSDELL, Register of Wills.

GEO. F. GRAHAM, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business. April 17, 1885

In the case of Thomas C. Tryon, Administrator of David Tryon, alias David Tryon deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 15th day of May A. D. 1885, at 11 o'clock, a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 16 H. J RAMSDELL, Register of Wills.

J. W. CLAMPITT, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Holding a Special Term for Orphans' Court Business. April 17, 1885.

In the case of Edwin A. McIntire, Administrator c. t. a. of David McIntire, dec'd, the Adm'r c. t a. aforesaid has, with the approval of the Court, appointed Friday the 15th day of May, A. D 1885, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Adm'r c. t. a. will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test 16 H. J RAMSDELL, Register of Wills.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Francis G. Middleton, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of April, 1885

IDA M. MIDDLETON,
Executrix,
16 1540 N. Y. Avenue, N. W.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Nellie Jidt, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscribers, on or before the 13th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 13th day of April, 1885.

HENRIETTA O. SINCLAIR,
WILLIAM W SINCLAIR,
MARY J. SINCLAIR,
his
RICHARD E. ⋈ SINCLAIR,
mark

EDWARDS & BARNARD, Solicitors. 16 Administrators.

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Legal Notices.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration on the personal estate of Albert Ray, late of the District of Colnmbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 13th day of April, 1885.
R. C. RAY,
H. R. ELLIOTT, Solicitor. 16 Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 13th day of April, 1885
RACHEL T. ALLSTON
v. } No. 9394.
PHILIP C. ALLSTON.
On motion of the plaintiff, by Mr. J. Ambler Smith, her solicitor, it is ordered that the defendant, Philip C, Allston, cause his appearance to be entered herein on or before the first rule day, occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.
By the Court. MAC ARTHUR, Justice.
True Copy Test: 16 R. J. MEIGS, Clerk.

LOST—THIRD VOLUME COKE'S REPORTS WITH name of T. T. Crittenden on it
CRITTENDEN & MACKEY.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. April 17, 1885.
In the matter of the Will of Bell W. Deal, late of the District of Columbia, deceased.
Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by G H. Slaybaugh.
All persons interested are hereby notified to appear in this court on Friday, the 15th day of May next at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. A. B. HAGNER, Justice.
Test: 16 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. April 17th, 1885.
In the matter of the Estate of Henrietta W. Rittenhouse, late of Washington, D. C., deceased
Application for the Probate of the last Will and Testament of the said deceased has this day been made by Benjamin F. Rittenhouse.
All persons interested are hereby notified to appear in this court on Friday the 15th day of May next at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted Probate as prayed. Poovided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. A. B. HAGNER. Justice.
Test: 16 H. J. RAMSDELL, Register of Wills.
GORDON & GORDON, Solicitors.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. April 17th, 1885
In the matter of the Estate of Elizabeth Margaret Jones, late of the District of Columbia, deceased
Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by George T. Jones
All persons interested are hereby notified to appear in this court on Friday, the 15th day of May, next, at 11 o'clock m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. A. B. HAGNER, Justice
Test: 16 H. J. RAMSDELL, Register of Wills.
FRED P. STANTON, Solicitor.

Legal Notices.

THIS IS TO GIVE NOTICE,
That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of James D. Clary, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23d day of March next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 23d day of March, 1885.
WILLIAM E. EDMONSTON,
13 Executor.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Delos B Sacket, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of March next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 20th day of March, 1885.
FRANCES ANN SACKET,
GEO. F. APPLEBY, Solicitor. 13 Administratrix.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 23d day of March, 1885.
JOHN O'DEA
v. } No. 26011.
ELIZABETH FREY, formerly
ELIZABETH MORAN.
On motion of the complainant, by Mr. E F. Arnold, his attorney, it is ordered that the defendant, Elizabeth Frey formerly Elizabeth Moran, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.
By the Court. W. S. COX, Justice
True copy. Test: 13 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.
ABRAHAM KENDICK ET AL.
v. } No. 9247. Equity. Doc 24
BENJAMIN F. KENDICK ET AL.
Benjamin F. Leighton, trustee, in the above-entitled cause, having reported a sale of the lot and premises described in the bill and proceedings, herein to T. A. King for the sum of $1100. cash It is this twenty fifth day of March A. D. 1885, ordered that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 27th day of April next. Provided, a copy of this order be published in the Washington Law Reporter, once a week for three consecutive weeks prior to that day.
By the Court. W. S. COX. Justice.
A true copy. Test: 13 R J. MEIGS, Clerk

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 17th day of March, 1885.
SARAH HELEN E. RYAN
v. } No. 9358.
EDMUND T. RYAN.
On motion of the plaintiff, by Mr. Merriman, her solicitor it is ordered that the defendant, Edmund T. Ryan, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.
By the Court A. B. HAGNER, Justice.
True copy. Test: 13 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE,
That the subscriber, of Washington City hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration on the personal estate of John Ashley, late of Staunton Station, Tenn., deceased
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of February next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 6th day of February, 1885
PHILIP H. SHERIDAN.
LINDEN KENT, Solicitor. 14

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 9th day of April, 1885.

JOHN E. KENDALL
v.
MARY JOSEPHINE MONROE and JAMES MONROE. } No. 9365. Equity.

On motion of the complainant, by Edwards & Barnard, their solicitors, it is ordered that the defendant James Monroe, cause his appearance to be entered herein on or before the first rule day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. CHARLES P. JAMES, Justice.
True copy. Test: 15 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 8th day of April, 1885.

SALLIE H. OWEN
v.
KENNEDY R OWEN. } No. 9345. Eq. Doc. 24.

On motion of the plaintiff, by Messrs. Worthington & Heald, her solicitors, it is ordered that the defendant, Kennedy R. Owen, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. CHARLES P. JAMES, Justice.
A true copy. Test: 15 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 9th day of April, 1885.

CHRISTIAN RUPPERT
v.
GEORGE A. HASKE ET AL. } No. 9275. Equity docket 24.

On motion of the plaintiff, by Messrs. Hanna & Johnston, his solicitors, it is ordered that the defendants, Bernard A. Haske and Chas. E. Prentiss, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHARLES P. JAMES, Justice.
True copy. Test: 15 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. April 10th, 1885.

In the matter of the estate of Edward Gannon.

Application for Letters of Administration on the Estate of Edward Gannon, late of the Police Force of the District of Columbia, has this day been made by Patrick M. Kelly, a creditor.

All persons interested are hereby notified to appear in this court on Friday, the 1st day of May, next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

By the Court. CHARLES P. JAMES, Justice.
Test: H. J. RAMSDELL, Register of Wills.
V. B EDWARDS, Solicitor. 15

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Wiley Lane, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 4th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of April, 1885.

JAMES M. GREGORY,
JAS. H SMITH, Solicitor. 15 Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business. April 10th, 1885

In the matter of the Estate of Albert Brewer.

Application for Letters of Administration on the estate of Albert Brewer, late of the Police Force of the District of Columbia, has this day been made by John W Brewer.

All persons interested are hereby notified to appear in this Court on Friday, the 1st day of May next, at 11 o'clock, a m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.
Test: H. J. RAMSDELL, Register of Wills.
V. B. EDWARDS, Solicitor. 15

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

THOMAS H. MORGAN ET AL.,
Complainants.
v.
PETER BOLDEN ET AL.,
Defendants. } Equity. No. 9302.

Edward H Thomas, trustee, having reported that he has sold lot "F" of Wm. O. Clark's subdivision of original lots 7 and 8, in square Two hundred and sixty-eight, to John Daly, at and for the sum of $850: It is by the Court, this eighth day of April, 1885, ordered that the said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 8th day of May, 1885. Provided, a copy of this order be published in the Washington Law Reporter and in the Evening Star, of Washington, D. C., once in each of three successive weeks before said last named day.

CHARLES P. JAMES, Justice.
A true copy. Test: 15 R. J. MEIGS. Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber hath obtained from the Supreme Court D. C., holding Special Term for Orphans' Court business, Letters of Administration on the estate of John Bell, late of Washington, D. C, deceased.

And that all persons having claims against said deceased are required to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of April, 1886; as they may otherwise be excluded by law from all benefit of said estate.

Given under my hand April 9th, 1885.

CATHARINE BELL,
15 Administratrix.
S W. Cor. 2d and O, N. W., Washington, D. C.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Chas. Miller, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of April, 1885.

HENRY R. MILES,
A. C. RICHARDS, Solicitor. 15 Administrator.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration c. t. a. on the personal estate of Mary E. Davison, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of March, 1885.

MYRON M. PARKER,
R. D. MUSSEY, Solicitor. 15 Administrator c. t. a.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration, on the personal estate of Charles M. Murdock, late of Ontario, Canada, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of March, 1885

FRED. W JONES,
15 Administrator.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Eliza Young, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 9th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 9th day of April, 1885.

JOSEPHINE YOUNG,
REBECCA R. YOUNG,
IRVING WILLIAMSON, Solicitor. 15 Executrices

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Legal Notices.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of George A. Bassett, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of March next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 24th day of March, 1885.
FANNIE C. BASSETT.
HANNA & JOHNSTON, Solicitors. 14 Adm'x c. t. a.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Hattie H. Morse, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of January next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 26th day of January, 1885
THOS. E. WAGGAMAN,
ALEX. PORTER MORSE, Sol'r 14 Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 3d day of April, 1885.
LORIN BLODGETT and ROBERT MORRISON, TRUSTEES, v. U. S. GRANT ET AL. } No. 8870. Eq. Doc.
On motion of the plaintiffs, by Mr. T. Q. Hildebrant, their solicitor, it is ordered that the defendants, The Washington Association and United States Insurance Company, a corporation, and the unknown heirs of Elias B. Caldwell, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.
By the Court. CHARLES P. JAMES, Justice.
True copy. Test: 14 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Hannah Adler, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 4th day of April, 1885.
HENRY ADLER,
SIMON WOLF, Solicitor. 14 Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. April 4, 1885.
In the matter of the Estate of William H. Marders.
Application for Letters of Administration on the estate of William H. Marders, late of the Police Force of the District of Columbia, has this day been made by Alice J. McCauley.
All persons interested are hereby notified to appear in this court on Friday, the 24th day of April next at 11 o'clock, a. m. to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. CHARLES P. JAMES, Justice.
Test: 14 H. J. RAMSDELL, Register of Wills.
V. B. EDWARDS, Solicitor

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Sabra P. Abell, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of March next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 28th day of March, 1885.
14 CHARLES R. ABELL.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Holding a Special Term for Orphans Court Business. April 4th, 1885.
In the matter of the estate of Henry Addison, late of the Police Force of the District of Columbia deceased.
Application for Letters of Administration on the estate of the said deceased has this day been made by Charles E. Creecy.
All persons interested are hereby notified to appear in this court on Friday, the 24th day of April next at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. CHARLES P. JAMES, Justice.
Test: 14 H. J. RAMSDELL, Register of Wills.
V. B. EDWARDS, Solicitor.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration on the personal estate of Isadora C Causten, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of March, next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 31st day of March, 1885.
WALTER KER,
JAMES H. TAYLOR, Solicitor. 14 Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 20th day of February, 1885.
HENRY CLARKE ET UX., Complainants, v. HENRY HOHMAN ET AL., Defendants. } No. 9338. Eq. Doc. 24.
On motion of the plaintiffs, by Messrs. Hagner & Maddox their solicitors, it is ordered that the defendants, Henry Hohman, and Louise Hohman, his wife, Amelia H. Perry, widow of Anson C. Perry; Leonard Perry, Rachel Rynders, sometimes called Rachel Reynolds, and William Rynders, her husband, Annetta Rynders, sometimes called Annetta Reynolds, and Hiram Rynders, her husband, Elizabeth A. Lent, and Benoni S. Lent, her husband, Elizabeth Atwell, and John Atwell, her husband, and Rossetta Hibbard, defendants, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default
By the Court. A. B. HAGNER, Justice.
A true copy. Test: 14 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.
That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of George W. Rice, late of the U. S. Army, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 30th day of March next; they may otherwise by law be excluded from all benefit of the said estate.
Given under our hands this 30th day of March, 1885.
D. L. BRAINARD,
14 M. P. RICE,
Executors.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John O. Birch, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of March next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 27th day of March, 1885.
GEORGE W. HARVEY,
GEO. F. APPLEBY, Solicitor. 13 Administrator.

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Washington Law Reporter

WASHINGTON - - - - - - - April 25, 1885.

GEORGE B. CORKHILL - - - EDITOR

WE publish, in this number of the LAW REPORTER, the opinion of the Supreme Court of the United States, Mr. Justice Miller delivering the opinion in the case, of the Commissioners of the District of Columbia v. the Baltimore & Potomac Railroad Company. The discussion of the questions involved has attracted great attention in the city, and its final settlement is exceedingly gratifying to the large number of persons interested. The opinion will commend itself to the profession as a clear, conclusive and demonstrative judgment of the principles of law governing the case.

Powers of a U. S. Commissioner in taking Depositions de Bene Esse.

Conkling's Treatise, 3d ed., page 414, says: "Whether the officer before whom the deposition is to be taken, is authorized to issue a summons in the nature of a subpœna, and if so, whether he would be authorized, in case of disobedience, to follow it up by a warrant or attachment to bring the witness before him; or whether a subpœna from the court in which the cause is pending, where the deposition is taken in the same district, is to be resorted to, and obedience enforced by attachment as in ordinary cases, and where the deposition is taken out of the district, whether the process of the circuit or district court for the district in which the proceeding takes place, can, in like manner, be resorted to, are questions to which no certain answer is furnished by the act."

Since Judge Conkling wrote his treatise, the practice, so far as reported cases show, in proceedings under the 30th section of the Judiciary Act of 1789—now section 863 of the Revised Statutes—has been in favor of applying to the court, whose commissioner is officiating, for any coercive process that may be resorted to in case of a contumacious witness. See Ex parte Humphrey, 2 Blatch. C. C., 228; In re Judson, 3 Blatch. C. C., 148; Ex parte Peck, 3 Blatch. C. C., 113.

It had been decided by Mr. Justice Washington, in the case of Evans v. Hettick, reported in Wash. C. C., 417, that the act of 1789, authorizing the taking of depositions *de bene esse*, must be so construed as to confine its operation to depositions taken *within the district*, where the witness lives more than one hundred miles from the place of trial; that if a witness lives out of the district, and more than one hundred miles from the place of trial, his deposition, if taken, must be under a commission. But that case was expressly overruled by the U. S. Supreme Court, in Patapsco Ins. Co. v. Southgate, 5 Peters, 604, wherein it was held that a *de bene esse* deposition may be taken out of the district in which the trial is to be had (under the hundred mile distance clause), and also that the certificate of the magistrate that the witness resides more than one hundred miles from the place of trial, is *prima facie* evidence of that fact, and the *onus* of proving him to reside within that distance at the time of trial is on the party objecting.

Place of Caption or Taking the Deposition.

The statute is silent as to the place where the deposition may be taken.

In the case of Boudinot, to the use of the Cherokee Nation, v. Phillips, recently before the Special Term of the Supreme Court, District of Columbia, upon a rule upon a witness to show cause why he should not be committed for contempt for his refusal to answer questions propounded in the course of a deposition *de bene esse* before a commissioner, Mr. Justice Cox decided that the commissioner had no jurisdiction, in that case, "because the application to take the testimony did not present the case contemplated by the statute."

The circumstances of that case were, that the suit was brought in the District of Columbia. The witness lived in the Indian Territory, more than one hundred miles from the place of trial, but he was found within the District, and served with a summons to appear before a U. S. commissioner, in the District. And the application was put upon the ground that "he lived more than one hundred miles distant from the place of trial." The witness appeared before the commissioner, in

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obedience to the subpœna, and testified down to a certain point, when the obnoxious question was propounded which he declined to answer, resting his refusal upon several grounds, and amongst them, upon the alleged want of jurisdiction of the commissioner. Although other grounds were mentioned by the learned justice in his opinion discharging the rule, one of which would alone have been effectual to dispose of the case, the lack of jurisdiction in the commissioner is also fatal to the motion to commit for contempt.

Reference was made, upon the argument, to the case Ex parte Humphrey, 2 Blatch. C. C., 228, hereinbefore cited. A hasty perusal of this case would seem to afford color of authority for the ruling in Boudinot v. Phillips, but it is respectfully submitted that a more careful consideration of the circumstances of that case leaves a doubt in the mind as to its applicability to Boudinot's case. In Ex parte Humphrey, the suit was pending in Boston, Mass.; the witness resided only fifty miles from Boston, but was casually in New York city, where it was sought to take his deposition *de bene esse*, on the ground that he was found at New York city, more than one hundred miles from the place of trial. The court, Betts, J., upon that state of facts, ruled that the act of 1789 does not apply to a witness who is casually absent from home, although he is found at a place more than one hundred miles from the place of trial of the cause, unless he is "about going to sea, or is aged, infirm, &c." Plainly this is the law, because the condition prescribed by the statute is that the "witness resides more than one hundred miles from the place of trial," not that he is found at such a distance.

In Voss v. Luke, 1 Cranch C. C., 331, the old circuit court (per Cranch, Ch. Justice), propounded the following questions, and to them gave the following answers, as determining the right to take testimony by deposition *de bene esse*. After premising that "The Judiciary Act of 1789, authorizing the taking the deposition of a witness who lives more than one hundred miles from the place of trial, or who is about to go out of the District, *and* to a greater distance than as aforesaid," he says: "Why take his deposition, if he lives more than one hundred miles from the place of trial? Because you cannot compel the attendance. Why not take his deposition if he is within one hundred miles? Because you may compel his attendance at the trial. Why not take his deposition if he is about to go out of the district, but not one hundred miles from the place of trial? Because you can compel his attendance. Why permit his deposition to be read if he has gone out of the United States, but not more than one hundred miles from the place of trial? Because you cannot compel his attendance." The same act declares that "any person may be compelled to appear and depose as aforesaid;" (that is, any person who lives more than one hundred miles from the place of trial; or is about to go out of the district, and more than one hundred miles from the place of trial, may be compelled to appear and depose.) How compelled? "In the same manner," says the act, "as to appear and testify in court;" that is, as the same persons might be compelled to appear and testify in court, if they were within one hundred miles of the place of trial, although they should be out of the district; for you cannot take the deposition of a witness who is about to go out of the district, unless he is about to go more than one hundred miles from the place of trial; and if you do take his deposition, you cannot use it, says the same act, unless it shall appear to the satisfaction of the court that the witness is dead, or gone out of (not the district, but) the United States, or to a greater distance than as aforesaid from the place where the court is sitting."

The inference from all these examples seems to be, that whenever the attendance of the witness at the trial can be compelled by judicial process, such attendance must be procured, and a deposition is inadmissible. The statute seems to prescribe a *status*, into which, if a witness falls, his deposition may be taken *de bene esse*, and read in evidence. Undoubtedly, in a majority of instances, it would be taken at or near the witness' residence. But that seems rather to result from reasons of convenience than from any necessity imposed by statute, or by any necessary implication. Why may it not be taken at the place of trial whenever the witness shall be found there casually,

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except at such time as to make him amenable to service of process of the court to attend at the trial? The necessity of a resort to a deposition certainly is not removed by the witness' mere casual appearance in the district where the trial is to be held, unless the cause has reached that stage when witnesses may be subpœnaed for the trial. And a witness' residence certainly is not changed by a temporary absence from home, *animo revertendi.*

While it may, with perhaps equal force, be contended, as was intimated by a remark of Mr. Justice Cox from the bench, on the hearing of Boudinot's case, that a witness, circumstanced like the one whose case was under consideration, might properly fall into the other class mentioned in the statute, to wit, "who is about to go out of the district in which the cause is to be tried, to a greater distance than one hundred miles from the place of trial." Yet it may well be doubted whether this witness falls more certainly into the one class or the other mentioned in the statute. He is fairly described in both clauses. And why may his deposition not be taken under either clause, since the place of caption would be the same in either case?"

* *
*

Affidavits of Executors and Administrators under the 73d Rule of Court.

In the case of Dudley, administrator, v. Henry C. Johnson, Law, No. 26,007, the plaintiff brought an action in the Supreme Court of the District upon certain promissory notes made by the defendant to the plaintiff's intestate. Accompanying the declaration was an affidavit under the 73d rule, but made by the plaintiff himself. The defendant filed no affidavit with his plea; whereupon plaintiff moved for judgment for want of an affidavit of defence. This motion was heard before Justice Cox in the circuit court last Saturday, and the decision settles an important question of practice, viz.: whether or not an executor or adminstrator can make the affidavit required under the 73d rule. Justice Cox said, to give judgment in such a case would be in violation of the act of Congress which declared that in no action by or against administrators, in which judgment might be rendered for either party, should either be permitted to testify. He overruled the motion for judgment.

Reed on the Statute of Frauds.

A treatise on the Statute of Frauds and of Other Like Enactments in Force in the United States of America and in the British Empire. By HENRY REED, of the Philadelphia Bar. Volumes I, II and III. Philadelphia: KAY & BROTHER, Law Booksellers, Publishers and Importers. 1884. . . .

We fully endorse all that is said by our contemporary, the *Albany Law Journal*, in an excellent review of Reed on the Statute of Frauds, which the publishers have kindly sent us. We have hitherto been unable to examine these books and to review them as fully and carefully as their merit justly deserves, and it gives us pleasure to publish and concur in the following extract from the review:

"The arrangement commences with the birth of the statute; involves its history and reputation, the extent of its sway, whether to Barbadoes, St. Kitts, Newfoundland, Maryland, etc.; how far the adoption of it, or its extension in any direction involved the acceptance of English decisions upon it: how it is to be applied, whether by the law of the forum or of the *locus contractus*, etc. The refinements drawn from cases of contracts made in one place and to be executed in another; made abroad to be performed in the forum; made in the forum to be performed abroad, are patiently marshalled and disposed of. Upon this there is erected the enormous superstructure of law, more or less applicable wherever a Statute of Frauds is known. The opening chapters, the third, fourth and fifth, relating to guaranties, are in analysis and precision, and in the life and vigor due to the author's use of his own language in stating the cases, admirable in every way. The propositions which they involve are clearly stated and profusely illustrated; while the chapter on promises of administrators or executors closes with a table of conclusions. There are eight chapters upon the subject of the memorandum, and five upon trusts, equally remarkable for their literary proportion and their rational solution of the difficulties of conflicting authorities.

"As to method, the names of cases are mainly given in the notes, and instances of thorough citation of authority will be found in vol. 1, pp. 156, 190, 490; while for apt condensation we refer to note *m* to section 355; to note *p* to section 382; to note *s* to section 393. Sections 359, as to whether a delivery of deeds in escrow constitutes a

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memorandum; 407 discussing how far in the memorandum a designation or description of the parties as "vendor," "trustee," "representative," "proprietor," etc., will answer as substitute for a name; and 434, on the decisions of our State as to whether contemporaneous written contracts show a consideration, are excellent. They do not stand alone. The appendix contains the statutes of England and the United States; and there is a table of cases filling 140 pages. In publisher's work the book is luxurious."

United States Supreme Court.

No. 1283—OCTOBER TERM, 1884.

JAMES B. EDMONDS, JOSEPH R. WEST, and GARRETT J. LYDECKER, Commissioners of the District of Columbia, Appellants,

vs.

THE BALTIMORE AND POTOMAC RAILROAD COMPANY.

Appeal from the Supreme Court of the District of Columbia.

Mr. Justice MILLER delivered the opinion of the court.

This is an appeal from the Supreme Court of the District of Columbia.

The railroad company has constructed its road from Baltimore through the District of Columbia and through the city of Washington, to the Potomac river at Long Bridge, on which it crosses that river to the Virginia side. It has done this by virtue of several acts of Congress granting the necessary authority to do so. At the Washington end of the bridge, it has purchased, and now owns, one of the squares of the city, and part of another, numbered, in the division of the city into streets, squares and lots, squares 233 and 267. These squares are divided by Fourteenth street, running north and south, and square 267, on its south side, abuts on Maryland avenue, one of the streets of the city. At the junction of Maryland avenue, whose course is nearly east and west, and Fourteenth street, there is a considerable space of ground made by Water street, which follows the bank of the river, and the other two streets, which is a public highway made by the union of all three streets at that point. A map or diagram found in the record, and which the reporter will copy, is necessary to a clear understanding of the controversy.

The railroad company alleges that its increased traffic requires, in the city of Washington, additional accommodations for receiving, storing and transferring freight, and that it has purchased the two squares mentioned for that reason, and that it intends to build a freight depot on square 233, as being at once convenient for the company, and more out of the way of the travel, current business and residences of the citizens than any point within reasonable distance of the line of the road. As their road is at present located lawfully on Maryland avenue, along which it touches the city end of the bridge, this allegation is probably true.

In order, however, to reach square 233 with its trains, they must depart from Maryland avenue and cross square 267 and Fourteenth street, which lies between the two squares, or they must make a curve from the avenue around the south end of square 267, and reach square 233 by the use of the public highway made by the junction of Maryland avenue, Water street, and Fourteenth street, and, in so doing, depart from Maryland avenue. The company gave notice, as required by law, to appellants, who, as Commissioners of the District of Columbia, are charged with the care and protection of the streets and other highways of the city, that it intended to construct a lateral track, which, leaving its main track on Maryland avenue at a point near its intersection with Thirteenth street, should cross square 267 from its east to its west side, and then crossing Fourteenth street, would reach its projected depot on square 233. The Commissioners refused consent to this, and, fearing it would be attempted without such consent, they guarded the way across the street by police force for some time.

In this condition of affairs, the railroad company filed its bill in chancery in the Supreme Court of the District of Columbia, praying an injunction against the Commissioners, to prevent them from interfering with the exercise of the right which the company claimed of laying its track across Fourteenth street, and that court granted the injunction as prayed.

The appeal of the Commissioners from this decree brings the matter in issue before us for review. Neither the pleadings in the case, nor the relief sought by the bill, nor the decree of the court, bring into question the right of the company to purchase squares 233 and 267, nor the right to erect on either of these a warehouse for the storage of freight. Nor does the question arise of their right to locate at that place such a depot as their business requires, nor to use it as such, if they have the right of access to it by using the streets and highways of the city for that purpose. This court does not, therefore, consider those

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questions, because the only point raised by the record is the right of the company to lay in or across the streets of the city their railroad track, and use it as a means of transit for its locomotives and cars, without any express authorization by act of Congress, or the consent of any authority representing the city of Washington or the District of Columbia.

The assertion of the existence of such a right is, to say the least, somewhat novel. It is not known to any member of this court, that any railroad company, whether its cars are propelled by steam or horse power, has ever claimed to use the streets of an incorporated city, or any part of them, without express authority from some legislative body, or the authorities of the city government. It would be a strange grant of power which, authorizing a railroad company to enter or even pass through a city, should leave to the company the selection, not only of its route into or through the city, but even the streets and highways over which its tracks should be laid, subject only to its sense of its own convenience and that of the people of the city. Nor does the decision of a court of justice, that the necessities of the company demand the use of these streets, and that the locality of the depot to which the track leads, is selected with a due regard to the interests of the whole city, make this claim of power any the less remarkable. No judicial decision is cited in favor of such propositions.

The streets of Washington are largely used by street railroad companies whose tracks occupy their surface. There are some four or five of these companies, and their cars are propelled by horse-power, and not by steam. They are not only a great convenience to the citizens, but they have become almost a public necessity. But it is not believed that a foot of all these tracks over all these streets exists otherwise than by virtue of an act of Congress, directing specifically and minutely where this shall be done. And no power exists in one of these corporations to lay a track, however short, anywhere else.

The railroad company now asserting this right, runs its cars from the east side of the city to the west, distance of two miles or more, through a densely populated part of the city, over a track, the location of every foot of which is prescribed with minuteness by acts of Congress. And its principal passenger depot, located several hundred yards from the main line of its road through the city, makes this deflection from that line solely by virtue of an express act of Congress, passed to enable the company to do so.

It is with these well-known facts before us, showing the care with which Congress has repeatedly exercised the power of granting, refusing and regulating the use of the streets of Washington for railroads, that we approach the examination of the statute or statutes which are supposed to grant the enlarged power claimed by the Baltimore & Potomac Company in this instance.

The first and most important of these is the act of Congress of February 5, 1867, 14 Stat., 389.

After reciting that it is represented that the Baltimore & Potomac Railroad Company, incorporated by an act of the General Assembly of Maryland, passed May 6, 1853, is desirous to construct a lateral branch from its road to the District of Columbia, it is enacted that "said company shall be, and they are hereby authorized to extend into and within the District of Columbia, a lateral branch, such as the said company shall construct or cause to be constructed, in a direction towards the said District, in connection with the railroad which they are about to locate and construct from the city of Baltimore to the Potomac river, in pursuance of their said act of incorporation; and the said Baltimore & Potomac Railroad Co. are hereby authorized to exercise the same powers, rights and privileges, and shall be subject to the same restrictions in the extension and construction of the said lateral railroad into and within the said District, as they may exercise or are subject to under and by intent of their said charter or act of incorporation, in the extension and construction of any railroad within the State of Maryland, and shall be entitled to the same rights, compensations, benefits and immunities, in the use of the said road, and in regard thereto, as are provided in their said charter, except the right to construct any lateral road or roads within the said District from the said lateral branch or road hereby authorized, it being expressly understood that the said Baltimore & Potomac Railroad Company shall have power only to construct from the said Baltimore & Potomac railroad one lateral road within the said District to some point or terminus within the city and county of Washington, to be determined in the manner hereinafter mentioned."

The third section of this act, after describing the care with which the company shall construct the road across any street or other way, adds: "But the said company, in passing into the District aforesaid, and in constructing the said road within the same, shall enter the city of Washington at such place, and shall pass along such public street or alley to such point or terminus within said

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city, as may be allowed by Congress, upon presentation of survey and map of proposed location of said road, provided that the level of said location within the said city shall conform to the present gradation of the streets, unless Congress shall authorize a different level."

This provision of the original act, under which the Baltimore & Potomac railroad enters this city, has never been repealed or modified, as far as we are aware, and it fully asserts the purpose of Congress to retain in its own hands the right to the use of the streets of the city in regard to this company and its road, as it has in regard to all others.

By another act, passed March 18th, 1869 (16 U. S., 1), entitled as supplementary to the one above cited, it was declared "that said company might enter the city of Washington with their railroad, and construct the same within the limits of said city on and by whichever one of the two routes herein designated the said company may elect and determine, that is to say:

"First. Beginning at the intersection of Boundary street and North Carolina avenue; thence along said North Carolina avenue to South D street; thence along South D street, westwardly, to Virginia avenue; thence along Virginia avenue, north-westwardly, to the intersection of South C street and West Ninth street; or,

"Second. Beginning at some point on the northern shore of the Eastern Branch of the Potomac river, between South L and South M streets; thence westwardly between said streets to the intersection of Virginia avenue with South L and East Twelfth streets; thence along said Virginia avenue, northwestwardly, to South K street; thence along said South K street, westwardly, to South Fourth street; thence, by a line curving to the right, to the north bank of the canal; and thence along the said bank of the canal, northwestwardly, to Virginia avenue; thence along Virginia avenue, northwestwardly, to the intersection of South C and West Ninth streets."

Whether this was in accordance with a map or maps furnished by the company we are not informed; probably it was. But this is wholly immaterial, as this supplementary statute was clearly made to *allow* the use of these streets as provided in section three of the original act. By another act, approved March 25th, 1870, Congress authorized the company to make some changes in the line of its road between East Fourth street and the terminus at the junction of C street south and Ninth street west, which change, however, is described with the same particularity as the routes above described, and by the same act the time for the completion of the road was extended.

The next act of Congress, approved June 21, 1870 (16 U. S. S., 61), also entitled as amendatory of the act of July 5, 1867, authorizes the company to extend its road from the terminus at Ninth street, "*by way of Maryland avenue, conforming to its grade, to the viaduct over the Potomac river at the city of Washington, known as the Long Bridge, and extend* their tracks over said bridge and connect with any railroads constructed, or that may hereafter be constructed in the State of Virginia." The act then delivers over the Long Bridge to the company for its use as a railroad bridge, with conditions requiring it to be kept in good repair, and open to free use as a public highway for all the people.

It is by virtue alone of the words of this statute, which we have cited in italics, that the road of the company is anywhere near the bridge, or near the *locus in quo* of the present controversy. It requires a larger measure of liberality in construing grants of the sovereign, and especially grants for the use of the streets of a city for a railroad, than we are accustomed to, to discover in this any authority to depart from Maryland avenue on its way from Ninth street to the Long Bridge.

The company having its road well under way needed a passenger depot for its business, a need much more important than its present need of an additional freight depot. It did not, however, attempt to establish one under its general powers, but made application to Congress, which authorized its construction, and in doing so described its location with great precision, and the streets along which the track must go, in departing from the right of way already granted.

This act of March 3, 1871, required the assent of the municipal authorities of the city of Washington for the erection of the depot, and that assent was given by a joint resolution of the board of aldermen and common council on March 9, 1871. And so necessary did the company deem the consent of Congress to this, or any other occupation of the streets or public property of the city, that it procured the passage of the act of May 21, 1872, ratifying the action of the city authorities in the matter, and setting out with greater detail the directiom of the lateral track to the passenger depot, and the streets over which it should go.

The title to the streets of Washington is in the United States, and not in the city, or in the owners of the adjacent lots. (Potomac

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S. B. Co. v. Upper Potomac Co., 109 U. S., 652.) It is, therefore, eminently proper that the right to use them for any other than the ordinary use of streets should proceed from Congress; and when we consider the express reservation of the power to Congres to allow this use in the original grant to the company, found in the third section of that act, and the detail and precision with which every foot of the track or tracks of the road has been prescribed by Congress, and every change which expediency required has been previously authorized by Congress, we can see no place for the assertion of any right in the company to make other tracks, or changes in location of those now existing without an act giving the consent of that body.

In the face of these statutes it is hardly necessary to look into the language of the charter of the company by the legislature of Maryland to see if the powers thus conferred, and which are said to be adopted by the act of Congress, give this extraordinary power.

It is sufficient to say that we do not find in the Maryland charter of that company any power to use the streets of a city as an incident of its right to run to or from such city. That no such right is granted may be fairly inferred from the fact that the track of this road runs for two miles under the city of Baltimore in a tunnel built for that purpose, which must have delayed the completion of the road two or three years, and cost a large sum of money. The company certainly would not have used this expensive underground roadway if anything in its charter authorized it to use the surface streets of the city.

And if the construction which counsel placed upon that charter is sound, it is very certain that Congress did not intend extending that power of the company into the District of Columbia, and part with its own control of the streets and highways of Washington city, for such a power is in conflict with the express language of the act, and with the constant practice under it.

We are referred by counsel to the Revised Statutes of the District of Columbia, chapter 18, concerning corporations. Clause 7 of that chapter provides for the voluntary association of individuals into corporations for building railroads in the District. It grants these corporations, when formed in compliance with the rules there prescribed, all the usual powers of such companies organized under State statutes, and all that are necessary to the operation of a railroad, and the powers thus conferred are, in the main, very liberal.

There are two reasons, however, why these provisions can give no aid to the Baltimore & Potomac company.

1. That corporation is organized under a special statute of the State of Maryland, and is a corporation of that State. The act of Congress of February 5, 1867, merely authorized that Maryland corporation *to extend its road* into the District of Columbia, and in defining the powers which the company should exercise in the District, it referred to and adopted, in the main, the act of the State of Maryland granting the charter.

This was three years before the general incorporation law was enacted by Congress, and the company has never organized under that law, or professed to be governed by it, or asserted itself to be a corporation of the District of Columbia. Whether it could do this or not it is unnecessary to decide; but it is very plain that the power conferred by that act was designed only for corporations organized under it, and are not conferred on corporations created by States of the Union, governed by the laws of those States.

2. But if this were not so, and if this company could exercise all the powers which that statute grants to corporations organized under it, the statute itself shows, as all the legislation by Congress has shown, both before and since, that that body never intended to part with the right to designate the route of a railroad through the city, and on what street its track should be located, and which streets it should use. This is plain from one of the closing sections of the chapter of the Revised Statutes on that subject, namely:

"Sec. 673. No railroad shall be built under the provisions of this chapter until the *route* and *termini* of such road have been approved by Congress."

This section of the general law for the voluntary organization of corporations for building railroads in the District of Columbia, expresses the same idea and the same purpose that section three of the act authorizing the Baltimore & Potomac Company to enter the District does, namely, to retain in the hands of Congress the absolute control of the use of the streets of the city by any railroad company whatever.

We are of opinion that, when this company wishes to depart in any direction from the line of its present track as prescribed for it by acts of Congress, it must obtain permission to do so from that body. And that Congress, and not the court nor the company, is the judge of the expediency or the necessity of such change, and of the manner in which the

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public good requires it to be made and the safeguards which should accompany it.

The decree of the Supreme Court of the District of Columbia is reversed, and the case remanded with directions to dismiss the bill.

Municipal Corporations.

THE CITY OF CIRCLEVILLE V. NEUDING.

Sup. Ct. Com. (Ohio), Jan. 20, 1885.

Where a city contracted for the construction of a cistern, eighteen feet wide and twenty feet deep, in a street, and before the cistern was completed, a horse fell into it and was killed, for want of sufficient protection around and over the excavation, to guard animals in the proper use of the street from danger.

Held, That the city was liable for the loss of the horse, although it did not reserve or exercise any control or direction over the manner of doing the work, except to see that it was done according to specifications which were a part of the contract

Error to the District Court of Pickaway County.

The city of Circleville, on the 20th day of December, 1881, made a contract with one Peter Barndt to construct a public cistern for the city in one of its streets, according to plans and specifications adopted by the city council. Barndt agreed to furnish all materials, and do all the labor in the construction of the cistern for a given price, agreed upon by him and the city council. The cistern was eighteen feet in diameter and twenty feet deep. After the excavation for the cistern had been made, and the wall built up about ten feet, and while the work was temporarily suspended, a mare, the property of the defendant in error, who lived within a few rods of the cistern, being at large accidentally on the street, fell into the cistern, and was so injured that she died soon afterwards. The cistern was left by the workmen without a fence around it, but it was covered partly with three-inch plank, and partly with one-inch pine boards. The covering of the excavation was not much raised above the level of the street, and at the time of the accident there was about eight inches of snow upon this covering. A trial in the common pleas resulted in a verdict and judgment for the plaintiff. This judgment was affirmed in the district court, and the defendant below files his petition in error to reverse this judgment.

MCCAULEY, J.: It is contended on behalf of the city, that it is not liable for the loss of the horse, because the cistern was in process of construction by an independent contractor when the injury occurred. The relation between the city and Barndt was clearly that of employer and independent contractor, and the rule is generally that for injuries occurring in the progress of work carried on by parties in that relation, the contractor alone is liable. But this liability is limited to those injuries which are collateral to the work to be performed, and which arise from the negligence or wrongful act of the contractor or his agents or servants. Where, however, the work to be performed is necessarily dangerous, or the obligation rests upon the employer to keep the subject of the work in a safe condition, the rule has no application. This distinction has been taken in this State in a number of cases: Carman v. Railroad Co., 39 O. St. R., 399; Hughes v. Railway Co., 39 O. St. R., 461; Tiffin v. McCarmack, 34 O. St. R., 638, and elsewhere in McCafferty v. The Railroad, 61 N. Y., 178; Prentiss v. Boston, 112 Mass., 43; Baltimore v. O'Donnell, 53 Md., 110; Logansport v. Dick, 70 Ind., 65; Crawford v. Smith, 79 Ind., 308; Robbins v. Chicago, 4 Wall., 457.

In this case the cistern contracted for was built in a street, was to be eighteen feet wide and twenty feet deep. Such an excavation in a street, unless protected to guard persons and animals using the street from falling into it, was necessarily dangerous. The city was under the statutory obligation at the time of the accident to keep its streets open, in repair and free from nuisance, and it could not cast this duty upon a contractor, so as to relieve itself from liability to one who should receive an injury. It is primarily liable for an injury resulting from such dangerous place in a street. If it has required the contractor to assume the risk of such damage, it may have a remedy against him. But the public, in the use of the streets, may rely upon the legal obligation of the city to keep them free from dangerous places, or if such places become necessary to be made in the course of an improvement, or work necessary or proper for the city to do, that it shall so guard them that no injury shall result in the ordinary use of the street.

Judgment affirmed.

[To appear in 41 O. S. R.]

Master and Servant: Superintendent of Worknot a Fellow-Servant.—Where the proof is that W was the superintending agent for the construction of the bridge, the falling of which occasioned the injuries complained of, and had the exclusive management, control and direction of the men and hands engaged in the work and in its construction, with authority to hire and discharge them at his pleasure, he could not be held to have been a fellow-servant with an employee, but stood in the position of vice principal. [Railway v. Sullivan. S. C. Tex., 1885. 5 Tex. L. R., 183].

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Personal Mention.

MR. JOHN NORTON POMEROY, the well-known legal author and editor of the *West Coast Reporter*, died in San Francisco last month.

GOV. PIERCE, of Dakota, vetoed the female suffrage bill passed by the legislature of that territory, and now the women of Dakota are petitioning President Cleveland to oust Gov. Pierce from office.

CHARLES S. WILSON, who was recently admitted to the bar in Maryland, was the first colored man admitted in that State. The Maryland law provides that only white men are eligible, and this decision has been sustained by frequent decisions of the Court of Appeals.

THE late President Arthur has resumed his law practice with his old firm. The public are informed that the furniture of his office is mahogany, with cheery trimmings; that the floors are covered with Axminster carpets, and the chairs and sofas with red Russia leather. Mr Evart's absence in the Senate will not be so seriously felt by the profession as it might have been.

THE Supreme Court of Iowa recently, through Judge Rothrock, all the bench concurring, rendered a decision sustaining in every part the iron-clad prohibitory law passed by the last legislature. The opinion is a sweeping one. It also sustains the validity of the injunctions to abate the saloons as nuisances. It remains to be seen what will be the result.

ABOUT a month ago Mary A. Leonard, of Seattle, W. T., made application for admission to practice law in the Oregon courts. She had pursued the regular law course at Seattle, had passed a satisfactory examination, and had been formerly admitted to the bar of the territorial courts, including that of the supreme court. From this latter body she held a certificate which she presented to the Supreme Court of Oregon. This application was refused, on the ground that the statute will not allow the admission of a "female" lawyer.

When will judges learn that the easiest and best way to avoid the clattering notoriety that these female lawyers always obtain by being refused admission to the bar, is to quietly admit them and disappoint them by so doing. The law is well settled, and it is worse than foolishness to waste discussion upon it.

A QUESTION of some interest to real estate agents and dealers was raised, but can hardly have been said to have been passed upon, by the Supreme Court of Massachusetts, in their recent decision of Barnard v. Coffin et al.,

Plaintiff owned some western lands, and applied to the defendants, who were land agents, one of them residing at Boston and the other in Iowa, to obtain an offer therefor; and the defendants employed a man in Illinois to get an offer.

It appeared that this man having found a purchaser at $22.75 an acre, reported to the defendants that he had an offer of $10 per acre. This offer the Boston partner reported to the owner in good faith, supposing it to be a *bona fide* offer, and it does not appear that either partner had any knowledge of the value of the land. The Boston partner recommended the plaintiff to accept the offer, which he accordingly did; and plaintiff now sued the defendants for negligence in not ascertaining the value of the land, and reporting an offer which was not a genuine one.

The trial judge took the view that in the absence of any usage sanctioning the delegation of such agency, the defendants were not authorized to employ a sub-agent; and that they were bound to inform themselves in regard to the value of the land and the genuineness of any offer submitted to them.

The court set aside the decision, rendering a rather opaque opinion which bristles with "ifs," "buts" and "whethers." The gist of it seems to be that where an owner merely employs agents to get offers and report them to him, and on his own judgment accepts the offer they report, they cannot be held responsible for the character of the offer, or for negligence in not getting the best offers, if they were only employed to get offers and they reported all the offers received, and if the owner acts wholly on his own judgment in accepting the offer without relying on defendant's recommendation.

The case is reported in the Boston Daily *Law Record* of November 14, 1884, and we presume will soon appear in the regular reports.—*N. Y. Daily Register.*

THEY are telling a story of Judge Hartington, who sat on the Supreme Court bench in ante-bellum days, in which the sentiment is good but the law peculiar. An action of trover was brought before him for a slave, the plaintiff making out his proof of title to the African legally. The judge told him this title was defective. "What more do I need to make out a title?" "A bill of sale from Almighty God inthe first place," was the reply.

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NEWSPAPERS OF TO-DAY.—People generally, and even those who may be termed steady readers and close observers, have but a faint conception of the magnitude and influence the press of this country has attained. From a careful examination of the advance pages of the 1885 edition of the *American Newspaper Directory*, to be issued May 1st, by Geo. P. Rowell & Co., of New York, it appears that there are 14,147 newspapers and periodicals published in the United States and Canada; and of these the United States has 12,973, an average of one paper for every 3,867 persons. In 1884 the total number of newspapers was less by 823 than at present, and while the gain this year is not so marked as in some previous years, it is still considerable. Kansas shows the greatest increase, the number being 78, while Illinois follows with a gain of 77. It is curious to notice that New York, the scene of so much political activity during the last campaign, should have only about one third as many new papers as the State of Pennsylvania. As an index to the comparative growth and prosperity of different sections of the country, especially the territories, the number of new papers forms an interesting study, and may well occupy the attention of the curious.

IT is now well settled that a sale of chattels, on condition that the title to the property should not pass until payment of the purchase price, although accompanied by change of possession, confers no title on the vendee or his *bona fide* purchaser, until performance of the condition. The latest case on this subject is Heinbochel v. Zugbaum, in the Supreme Court of Montana, reported in 17 Chicago Legal News, 230. Wade, C. J., writing the opinion, reviews a number of authorities, and comes to the conclusion that the weight of American authority is in favor of the rule as stated above. In this case it was further decided, that the giving of notes for the price of the property did not change the well-settled rule. The presumption is that the plaintiff took the notes, not in absolute discharge of the price, but as a postponement only, and the right of the plaintiff to sue for the price of the goods revives on the non-payment of the paper at maturity.—*Kansas Law Reporter.*

JUDGE BARTLETT, in a Brooklyn court, recently rendered an opinion to the effect that a man's praying on the sidewalk and in liquor saloons is not a proof that he is insane. It is safe to say that the decision willl be affirmed on appeal.—*N. Y. Tribune.*

NOTES OF RECENT DECISIONS.

Lease: To be Paid in Case of Destruction of Premises, but Requires Repairs to be Made by Lessee; Loss of Light and Ventilation by New Building Erected on Adjoining Lots.—The lessee of a room in a block, covenanted to keep the premises in good and constant repair, but if the premises were destroyed, the lease was to become void and the rent to cease. A building was thereafter erected on an adjoining vacant lot by the owners thereof—not the lessors—whereby the demised premises were, to a great extent, cut off from light and ventilation, and were also rendered damp and unhealthy, but were capable of being made tenantable by repairs. *Held*, That the lessee was not authorized to abandon the lease and refuse payment of the accruing rent. [Laura W. Hilliard et al. v. New York & Cleveland Gas Coal Co. Sup. Ct. of Ohio, Feb. 3, 1885.]

Will: Construction; Precatory Trust.—Where the testator's will left all his property, real and personal, to his wife, "for her own use and benefit, during her natural life," subject to the conditions (1) to pay all his debts; (2) that after providing for her own wants and comforts, he leaves "to the discretion of his dear wife to give to such of his relatives such aid or assistance as she may of her own will think proper and just," declaring that his relatives have no claim upon him or upon his property, and anything that they shall receive from his wife, shall be in accordance with her sense of justice, and his personal directions previously expressed to her. Secondly, that the balance (whatever that may be) of his property may go to advance the cause of religion and charity, cannot be construed as establishing a trust in the nature of a precatory trust for the benefit of the "relatives" of said testators. [Corby v. Corby. Sup. Ct. Mo. March 16, 1885.]

Executors: Bequest for Charitable Use; Discretion of Executor in Selecting the Charity. An executor is, in effect, but the mandatary of the testator touching the disposition of the will. He must, in the exercise of his functions thereunder, conform to its terms and directions. So, where he is instructed to pay a stipulated sum to any asylum he may select "especially devoted to the care of aged persons," he is not authorized to give it to an asylum devoted by the terms of its charter to the relief of destitute females and helpless children, and cannot be compelled to do so. [Succession of Nicholson; S. C. La., March 20, 1885.]

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Executors: Commissions; Attorney's Fees.—1. Where one of two executors is not entitled to commissions because he is a legatee under the will, the other other executor can claim only one half the commissions. 2. In estimating the fees of attorneys connected with the administration of a succession, it is proper to consider whether the proceedings in which the services were rendered were or not beneficial to the succession. [Succession of Baumgarden; S. C. La., March 30, 1885.]

Statute of Frauds: Contract to Negotiate Purchase of Land for One-Half Profits of Resale.—A and B agreed orally that A should negotiate for B the purchase, at a certain price, of a piece of land, the price to be paid and title taken by B. and that upon a sale the profit should be divided between them. *Held*, Not within the Statute of Frauds, and that no trust was created. [Snyder v. Walford. S. C. Minn. Feb. 5, 1885. 22 N. W. Rep., 254.]

Miner's Liens: Priority; Foreclosure.—The lien of a miner takes priority over that of a subsequent judgment creditor, and may be foreclosed as against the property affected thereby, although a prior miner's lien had already been foreclosed against the same property. [Venard v. Old Hickory Mining Company. Sup. Ct. Oregon. March 21, 1885. 6 W. C. Rep., 50.]

The Courts.

U. S. Supreme Court Proceedings.

APRIL 20, 1885.

Frederick G. Bromberg, of Mobile, Ala., and C. B. Bellinger, of Portland, Ore., have been admitted to practice.

No. 231. John Dobson and James Dobson, etc., v. The Hartford Carpet Company.

Nos. 232 and 233. John Dobson and James Dobson, etc., v. The Bigelow Carpet Company; final decree reversed with costs, and causes remanded with directions to disallow the award of damages and to award six cents damages, and to allow to the defendants a recovery for their costs after interlocutory decree, and to the plaintiffs a recovery for their costs to and including interlocutory decree. Opinion by Mr. Justice Blatchford, Mr. Justice Bradley dissenting.

No. 1263. Rudger Clawson v. The United States; judgment affirmed. Opinion by Mr. Justice Blatchford.

No. 1141. Frederick Hopt v. The People of the Territory of Utah; judgment reversed and cause remanded with directions to order the verdict to be set aside and a new trial granted. Opinion by Mr. Justice Gray, Mr. Justice Harlan and Mr. Chief Justice Waite dissenting.

No 588. Thomas Poindexter v. Samuel C. Greenhow, treasurer, etc.; judgment reversed with costs and cause remanded with instructions to render judgment upon the agreed statement of facts in favor of the plaintiff. Opinion by Mr. Justice Matthews, Mr. Justice Bradley, Mr. Chief Justice Waite, Mr. Justice Miller and Mr. Justice Gray dissenting.

No. 589. William L. White v. Samuel C. Greenhow; judgment reversed with costs and cause remanded with directions to proceed therein in conformity with law. Opinion by Mr. Justice Matthews, Mr. Justice Bradley, Mr. Chief Justice Waite, Mr. Justice Miller and Mr. Justice Gray dissenting.

No. 590. Samuel C. Carter v. Samuel C. Greenhow; judgment affirmed with costs. Opinion by Mr. Justice Matthews.

No. 1260. R. B. Chaffin v. William Taylor; judgment reversed with costs and cause remanded with instructions to take further proceedings in accordance with law and in conformity with the opinion of this court. Opinion by Mr. Justice Matthews, Mr. Justice Bradley, Mr. Chief Justice Waite, Mr. Justice Miller and Mr. Justice Gray dissenting.

No. 826. S. Brown Allen, auditor, etc., v. The Baltimore & Ohio Railroad Company; decree affirmed with costs. Opinion by Mr. Justice Matthews, Mr. Justice Bradley, Mr. Chief Justice Waite, Mr. Justice Miller and Mr. Justice Gray dissenting.

No. 941. J. Adair Pleasants v. Samuel C. Greenhow, treasurer, etc.; decree affirmed with costs. Opinion by Mr. Justice Matthews.

No. 1278. Morton Marye, auditor, etc., v. Edwin Parsons; decree reversed with costs and cause remanded with directions to dismiss the bill. Opinion by Mr. Justice Matthews.

No. 235. John S. Cavender v. Robert S. Cavender; decree affirmed with costs. Opinion by Mr. Justice Woods.

No. 227. The Western Electric Manufacturing Company v. The Ansonia Brass and Copper Company; decree affirmed with casts. Opinion by Mr. Justice Woods.

No. 242. Mary K. Burton v. The West Jersey Ferry Company; judgment affirmed with costs. Opinion by Mr. Justice Harlan.

No. 136. The Commissioners of Buncombe County et al. v. Vincent R. Tommey et al.; application for rehearing postponed until next term, and leave granted to counsel to file additional briefs before the 1st of October next. Announced by Mr. Justice Harlan.

No. 1283. James B. Edmonds et al., etc., v. The Baltimore & Potomac Railroad Company; appeal from the Supreme Court of the District of Columbia; decree reversed with costs and cause remanded with directions to dismiss the bill. Opinion by Mr. Justice Miller.

No. 1285. Richard B. Chapman v. Edward K. Goodnow; motion to dismiss continued for hearing on merits. Announced by Mr. Chief Justice Waite.

No. 1124. The Pacific National Bank of Boston v. George Mixter; motion to dismiss denied. Opinion by Mr. Chief Justice Waite.

No. 768. The Bradshaw Milling Company v. Abram S. Hewitt; dismissed with costs. Opinion by Mr. Chief Justice Waite.

No. 394. The Vicksburg, Shreveport & Pacific Railroad Company v. Elias S. Dennis, Sheriff, etc.; motion to dismiss or affirm denied. Announced by Mr. Chief Justice Waite.

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No. 1007. Pilar Garcia de Sabiarego et al. v. Mary A. Maverice et al.; motion for certiorari granted. Announced by Mr. Chief Justice Waite.

No. 198. Wm. L. Gibson v. Edward Lyon et al.; ordered for reargument at the next term.

No. 6. Original The State of Alabama v. Isaac T. Burr et al.; assigned for argument on the second day of next term after cases already assigned for that day.

No. 311. The Phœnik Mutual Life Insurance Company v. M. Mundy; dismissed per stipulation.

No. 297. The County Court of Scotland County v. The United States ex rel. William Hill; dismissed per stipulation.

No. 567. The Canada Southern Railway Company v. Henry Sanger; dismissed per stipulation.

SUPREME COURT OF THE DISTRICT OF COLUMBIA

GENERAL TERM.

April 29, 1885.

Adjourned sine die.

IN EQUITY.—New Suits.

April 18, 1885.

9406. Henry Coleman v. Elizabeth M De Camp et al. For injunction. Com sol, George E. Harris.

9407. Gustav Hartig et al v. William German et al. For sale. Com sol, L. Tobriner.

April 20, 1885

9408. Lena Hoffman et al. v. William Thomas et al Partition by sale. Com sol. B. F. Leighton

9409. Sarah E Chase v Dennis Finney et al. Sale by partition. Com sols, Moore and Duhamel.

April 21, 1885

9410. Nellie F. Pumphrey et al v. Elizabeth Pumphrey. Partition by sale. Com sol, J. J. Darlington.

April 22, 1885

9411. Alexander C. Moore v. Mary Moore. For divorce. Com sol. W. T. Bailey.

9412. John Stewart v. Benedict J. Gallant et al .To quiet title Com sol, I Williamson.

April 24, 1885.

9413. Chas E Creecy v. John P. D. Caton. Injunction. Com sol, V. B. Edwards.

CIRCUIT COURT.—New Suits at Law.

April 18, 1885

26110. O. O Spicer et al. v Thomas L. House. Notes, $207. Piffs atty, H. W. Garnett

26111 Geo. Koob & Son v The Columbia R. R. Co. Appeal. Defts attys. Murdock and Cook.

April 20, 1885

26112. F. B. Lilley & Co. v. Thayer & Hastings. Acct., 2,299 62. Piffs atty, N. Wilson

26113. Charles E. Creecy v. Mary Boarman Certiorari. Defts atty, C. C. Cole.

April 21, 1885.

26114. Perry & Co. v. Walter D. Wyvill Note, 467 79 Piffs atty, W. Blair.

26115 Kate Thornton v. Thomas W. Bartley. Acct, $358.50. Piffs atty, R. P. Jackson.

April 24, 1885.

26116. George Candy et al. v. Chas. H Smith. Acct., $420. Piffs atty, Edwards & Barnard.

26117. John D. W. Moore v. Barney McQuade. Plea of title. Piffs atty, C. M. & H S. Matthews.

PROBATE COURT.—Justice Hagner.

April 24, 1885.

Estate of Henry Douglass; order appointing Sidney V. Douglass guardian.

In re will of Patrick Cullinane; will filed for probate.

Estate of Louisa Tenny; petition of Ann W. Tenny for letters of administration filed

Estate of Sara C. Johnson; letters issued to Rebecca J Adams; bond $2,800

Estate of W. T. Griffin; letters issued to E W. W Griffin.

Estate of Robert A. Reynolds; petition of V. C. Reynolds for letters filed.

Estate of John E Kendall; citation to next of kin.

Estate of Philip Otterback; order of publication issued.

Estate of Mary Mills; letters to Mary J. R. White on bond of $800

Estate of Joseph L. Savage; administrator authorized to institute equity suits, etc.

Estate of W. Henry Harrison; letters granted to J. A' Johnson on bond of $100.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business. April 22d, 1885.

In the case of Amos Webster and John B Larner. Executors of Eliza Wilson, the Executors aforesaid have, with the approval of the Court, appointed Friday, the 15th day of May, A. D 1885 at 11 o'clock a. m, for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test; 17 H. J. RAMSDELL Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. April 22d, 1885.

In the case of Rosa B. Collins and Florence M. Collins (now Dowden) Executrices of Elizabeth Collins, deceased, the executrices aforesaid have, with the approval of the court, appointed Friday, the 29th day of May, A. D. 1885, at 11 o'clock a m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Executrices will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 17 H. J. RAMSDELL. Register of Wills.

THIS IS TO GIVE NOTICE

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration d b n. c t a. on the personal estate of James H. Causten, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of April, 1885.

THOMAS E WAGGAMAN,

IRVING WILLIAMSON, Solicitors. 17 Adm'r d.b.n.c.t a.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 22d day of April, 1885.

NELLIE F. PUMPHREY ET AL.
v.
ELIZABETH A. PUMPHREY ET AL. } No 9410. Eq. Doc. 24.

On motion of the complainants, by Mr. J. J. Darlington, their solicitor, it is ordered that the defendants, Joseph Lambert Jarboe and Ida Elizabeth Jarboe, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.

True copy. Test: 17 R. J MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 22d day of April, 1885.

FREDERICA A. PECK
Plaintiff,
v.
GEORGE W. PECK,
Defendant. } In Equity. No 9404.

Application for divorce on the ground of desertion.

On motion of the plaintiff by Mr. T. J. Mackey, her solicitor, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A B. HAGNER, Justice

True copy. Test: 17 R J. MEIGS, Clerk

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Maria Christine Koch, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of April, 1885.

WERNER KOCH.

LOUIS SCHADE, Solicitor. 17 Executor.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Holding a Special Term for Orphans Court Business. April 24th, 1885.

In the matter of the estate of Philip Otterback, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration d. b. n c. t a on the estate of the said deceased has this day been made by Henry B. Otterback, Thomas E. Young and Lewis E. Tavenner.

All persons interested are hereby notified to appear in this court on Friday, the 15th day of May next at 11 o'clock, a m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration d. b n c t a. on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B. HAGNER, Justice.
Test 17 H J. RAMSDELL, Register of Wills.
W. WILLOUGHBY, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. April 24, 1885

In the matter of the Estate of Catharine Venable, late of the District of Columbia, deceased

Application for Letter of Administration on the estate of the said deceased has this day been made by Kate C. Smith.

All persons interested are hereby notified to appear in this court on Friday the 15th day of May next at 11 o'clock, a m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B. HAGNER, Justice.
Test: 17 H J. RAMSDELL, Register of Wills.
H. R. WEBB, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. April 22d, 1885.

In the case of Rosa B. Collins and Florence M Collins (now Dowden) Executrices of John Collins, deceased, the Executrices aforesaid have, with the approval of the court, appointed Friday, the 29th day of May, A D. 1885, at 11 o'clock a m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executrices will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

Test 17 H. J. RAMSDELL, Register of Wills.
HAGNER & MADDOX, Solicitors.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. April 22d, 1885.

In the case of Thomas E Waggaman, Administrator of Mary A. Auth, alias Mary A. Lawler, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 22d day of May, A. D. 1885, at 11 o'clock a. m, for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 17 H J RAMSDELL, Register of Wills.
WM. J MILLER, Solicitor.

THIS IS TO GIVE NOTICE:

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Mary Ann Hagan, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of April next: they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of April, 1885.

MICHAEL J. KEANE.
HANNA & JOHNSTON, Solicitors. 16 Administrator

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

DOUGLAS ET AL. v WILLIAMS ET AL. } No. 8909. Eq. Doc., 23.

Irwin B. Linton, trustee herein, having reported a sale of part of lot numbered five (5) in square numbered one hundred and seventeen (117) in the city of Washington, District of Columbia, being the west sixteen (16) feet front on north L street, of said lot five (5) by the depth thereof, with the improvements and appurtenances to Charles B. Bailey, for the sum of six hundred and seventy (670) dollars.

It is, this 22d day of April, A. D. 1885, ordered that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 18th day of May, 1885. Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said day

By the Court. A. B. HAGNER, Justice.
A true copy 17-3 Test: R. J. Meigs, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

MARY LOMAX TAYLOR ET AL., Complainants, v. EUGENE PHEBE WARREN ET AL., Defendants. } Equity. No. 9269.

On consideration of the report of the trustees, George F. Appleby, William E Edmonston and William Taylor Snyder, herein filed, recommending that authority be given them by the court to accept the bid of W. L. Brown for the purchase of lots 10 and 11 in square No. 221 in Washington City, D. C., (the same being the property known as 21 Madison Place, and the residence of the late Benj. Ogle Tayloe, dec'd) at and for the sum of fifty six thousand dollars ($56,000), payable one-third cash and residue in 1, 2, 3 and 4 years with interest at 6 per centum per annum from day of sale to him until paid, it is, this twenty-second day of April, A. D. 1885, ordered by the court that the trustees accept said bid and sell the said property to the said W. L. Brown for the said sum of $56,000 on terms aforesaid, unless cause be shown prior to Thursday May 7th, 1885, why such sale should not be made or why, the terms of sale being fully complied with, a final order of ratification of sale should not be passed on said seventh day of May, provided a copy of this order be published daily in the Evening Star, commencing April 23d, and once in the Washington Law Reporter prior to said seventh day of May.

(Signed) A B HAGNER, Asso. Justice.
A true copy. 17-1 Test: R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 20th day of February, 1885.

HENRY CLARKE ET UX., Complainants, v. HENRY HOHMAN ET AL., Defendants. } No. 9338. Eq. Doc. 24.

On motion of the plaintiffs, by Messrs. Hagner & Maddox, their solicitors, it is ordered that the defendants, Henry Hohman, and Louise Hohman, his wife, Amelia H. Perry, widow of Anson O. Perry; Leonard Perry, Rachel Rynders, sometimes called Rachel Reynolds, and William Rynders, her husband, Annetta Rynders, sometimes called Annetta Reynolds, and Hiram Rynders, her husband, Elizabeth A. Lent, and Benoni S. Lent, her husband, Elizabeth Atwell, and John Atwell, her husband, and Rossetta Hibbard, defendants, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 14 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 2d day of April, 1885.

LORIN BLODGETT and ROBERT MORRISON, TRUSTEES, v. U. S. GRANT ET AL. } No. 8870. Eq. Doc.

On motion of the plaintiffs, by Mr. T. Q. Hildebrant, their solicitor, it is ordered that the defendants, The Washington Association and United States Insurance Company, a corporation, and the unknown heirs of Elias B. Caldwell, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. CHARLES P. JAMES, Justice.
True copy. Test: 14 R. J. MEIGS, Clerk.

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Legal Notices.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration c. t. a. on the personal estate of George Gregory, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of April, next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 20th day of April, 1885.
GEO R. GRAY,
O. T THOMPSON, Solicitor. 17 Administrator c t. a.

THIS IS TO GIVE NOTICE.
That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of August Doehrer, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 13th day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under our hands this 13th day of April, 1885.
HENRY LUIHEL,
HENRY KOCH,
D. W. GLASSIE, Solicitor 17 Executors.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Catherine Hill late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 18th day of April, 1885.
JOSEPH F HODGSON
17 Executor.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Wm. B. Gove, late of Weare, New Hampshire, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 17th day of April, 1885.
WILLIAM E. ABBOTT,
HENRY M. BAKER, Solicitor. 17 Executor.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of James Read, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 20th day of April, 1885.
RICHARD ANDERSON,
E. H. THOMAS, Solicitor. 17 Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. April 24, 1885.
In the matter of the Estate of Rebecca Reynolds, late of the District of Columbia, deceased.
Application for the Probate of the last will and Testament and for Letters Testamentary on the estate of the said deceased, has this day been made by Rebecca Reynolds Krug and John F. Reed.
All persons interested are hereby notified to appear in this court on Friday, the 15th day of May next at 11 o'clock, a m. to show cause why the said Will should not be proved and admitted to probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. A. B HAGNER, Justice.
Test 17 H. J. RAMSDELL, Register of Wills.
FRANCIS P. B. SANDS, Solicitor.

Legal Notices.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Langley B. Culley, late of Baltimore, Md., deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 20th day of April, 1885.
CHARLES ALLEN,
17 Administrator.

THIS IS TO GIVE NOTICE,
That the subscriber of Fairfax County, Va, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Mary W. Jones, late of Fairfax County, Va., deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of March next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 17th day of March, 1885.
MARK C. JONES,
H. E. DAVIS, Solicitor. 17 Administrator.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Ellen J. King, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 21st day of April, 1885.
GEO W. KING,
JESSE H. WILSON, Solicitor. 17 Administrator.

THIS IS TO GIVE NOTICE,
That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration on the personal estate of Mary E. King, late of the District of Columbia deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 21st day of April, 1885
GEO W KING,
JESSE H. WILSON, Solicitor. 17 Administrator.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t a. on the personal estate of Sarah J Chipman, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 17th day of April, 1885.
ANSON S TAYLOR.
17 Administrator c t. a.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Louisa Tenney, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 24 day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 24th day of April, 1885
ROBERT B. TENNEY,
R. P. JACKSON, Solicitor. 17 Executor.

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Legal Notices.

LOST—THIRD VOLUME COKE'S REPORTS WITH name of F. T. Crittenden on it
CRITTENDEN & MACKEY.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration on the personal estate of Albert Ray, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 13th day of April, 1885.
R. C. RAY,
H. R ELLIOTT, Solicitor. 16 Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 13th day of April, 1885.
RACHEL T. ALLSTON
v. } No. 9394.
PHILIP C. ALLSTON.
On motion of the plaintiff, by Mr. J. Ambler Smith, her solicitor, it is ordered that the defendant, Philip C, Allston, cause his appearance to be entered herein on or before the first rule day, occurring forty days after this day; otherwise the cause will be proceeded with as in case of default,
By the Court. MAC ARTHUR, Justice.
True Copy Test: 16 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. April 17, 1885.
In the matter of the Will of Bell W. Deal, late of the District of Columbia, deceased.
Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by G H. Slaybaugh.
All persons interested are hereby notified to appear in this court on Friday, the 15th day of May next at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. A. B. HAGNER, Justice.
Test: 16 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business April 17th, 1885.
In the matter of the Estate of Henrietta W. Rittenhouse, late of Washington, D. C., deceased
Application for the Probate of the last Will and Testament of the said deceased has this day been made by Benjamin F. Rittenhouse.
All persons interested are hereby notified to appear in this court on Friday the 15th day of May next at 11 o'clock, a. m, to show cause why the said Will should not be proved and admitted Probate as prayed. Poovided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. A B. HAGNER. Justice.
Test: 16 H J, RAMSDELL, Register of Wills.
GORDON & GORDON, Solicitors.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. April 17th, 1885
In the matter of the Estate of Elizabeth Margaret Jones, late of the District of Columbia, deceased
Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by George T. Jones
All persons interested are hereby notified to appear in this court on Friday, the 15th day of May, next, at 11 o'clock m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. A. B. HAGNER, Justice
Test: 16 H. J RAMSDELL, Register of Wills.
FRED P. STANTON, Solicitor.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. April 17th, 1885.
In the matter of the Estate of Isabel Leonard, late of the District of Columbia, deceased.
Application for the Probate of the last Will and Testament of the said deceased has this day been made by James B. McCrellis, attorney for Antoinette Russell.
All persons interested are hereby notified to appear in this court on Friday, the 8th day of May next at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to Probate and record as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. A B. HAGNER. Justice.
Test: 16 H. J. RAMSDELL, Register of Wills.
GEO. F. GRAHAM, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business. April 17, 1885
In the case of Thomas C. Tryon, Administrator of David Tryon, alias David T Tryon, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 15th day of May A. D 1885, at 11 o'clock, a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
Test: 16 H. J. RAMSDELL, Register of Wills.
J. W. CLAMPITT, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Holding a Special Term for Orphans' Court Business. April 17, 1885.
In the case of Edwin A. McIntire, Administrator c. t. a. of David McIntire, dec'd, the Adm'r c. t a. aforesaid has, with the approval of the Court, appointed Friday the 15th day of May, A. D 1885, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Adm'r c. t. a. will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
Test 16 H. J RAMSDELL, Register of Wills.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Francis G Middleton, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 13th day of April, 1885
IDA M. MIDDLETON,
Executrix,
16 1340 N. Y. Avenue, N. W.

THIS IS TO GIVE NOTICE.
That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Nellie Jidt, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscribers, on or before the 13th day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under our hands this 13th day of April, 1885.
HENRIETTA C. SINCLAIR,
WILLIAM W. SINCLAIR,
MARY J. SINCLAIR,
his
RICHARD E. ⋈ SINCLAIR,
mark
EDWARDS & BARNARD, Solicitors. 16 Administrators.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 9th day of April, 1885.

JOHN E. KENDALL
v.
MARY JOSEPHINE MONROE and JAMES MONROE. } No. 9365. Equity.

On motion of the complainant, by Edwards & Barnard, their solicitors, it is ordered that the defendant James Monroe, cause his appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHARLES P. JAMES, Justice.
True copy. Test: 15 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 8th day of April, 1885.

SALLIE H. OWEN
v.
KENNEDY R OWEN. } No. 9345 Eq Doc. 24.

On motion of the plaintiff, by Messrs. Worthington & Heald, her solicitors, it is ordered that the defendant, Kennedy R. Owen, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHARLES P. JAMES, Justice.
A true copy. Test: 15 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 9th day of April, 1885.

CHRISTIAN RUPPERT
v.
GEORGE A. HASKE ET AL. } No. 9275 Equity docket 24.

On motion of the plaintiff, by Messrs. Hanna & Johnston, his solicitors, it is ordered that the defendants, Bernard A. Haske and Chas. E. Prentiss, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHARLES P. JAMES, Justice.
True copy. Test: 15 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. April 10th, 1885.

In the matter of the estate of Edward Gannon.

Application for Letters of Administration on the Estate of Edward Gannon, late of the Police Force of the District of Columbia, has this day been made by Patrick M. Kelly, a creditor.

All persons interested are hereby notified to appear in this court on Friday, the 1st day of May, next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.
Test: H. J. RAMSDELL, Register of Wills.
V. B EDWARDS, Solicitor. 15

THIS IS TO GIVE NOTICE

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Wiley Lane, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 4th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of April, 1885.

JAMES M GREGORY,
JAS. H SMITH, Solicitor. 15 Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business. April 10th, 1885

In the matter of the Estate of Albert Brewer.

Application for Letters of Administration on the estate of Albert Brewer, late of the Police Force of the District of Columbia, has this day been made by John W Brewer.

All persons interested are hereby notified to appear in this Court on Friday, the 1st day of May next, at 11 o'clock, a m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.
Test: H. J. RAMSDELL, Register of Wills.
V. B. EDWARDS, Solicitor. 15

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

THOMAS H. MORGAN ET AL.,
Complainants.
v
PETER BOLDEN ET AL.,
Defendants. } Equity. No. 9302.

Edward H Thomas, trustee, having reported that he has sold lot "F" of Wm. O. Clark's subdivision of original lots 7 and 8, in square Two hundred and sixty-eight, to John Daly, at and for the sum of $850: It is by the Court, this eighth day of April, 1885, ordered that the said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 8th day of May, 1885. Provided, a copy of this order be published in the Washington Law Reporter and in the Evening Star, of Washington, D. C., once in each of three successive weeks before said last named day.

CHARLES P. JAMES, Justice.
A true copy. Test: 15 R. J. MEIGS. Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber hath obtained from the Supreme Court D. C., holding Special Term for Orphans' Court business, Letters of Administration on the estate of John Bell, late of Washington, D. C, deceased.

And that all persons having claims against said deceased are required to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of April, 1886; as they may otherwise be excluded by law from all benefit of said estate.

Given under my hand April 9th, 1885.

CATHARINE BELL,
15 Administratrix
S W. Cor. 2d and C, N. W., Washington, D. C.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration on the personal estate of Chas. Miller, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of April, 1885.

HENRY R. MILES,
A. C. RICHARDS, Solicitor. 15 Administrator.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration c t a. on the personal estate of Mary E. Davison, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of March, 1885.

MYRON M PARKER,
R. D. MUSSEY, Solicitor. 15 Administrator c t a.

THIS IS TO GIVE NOTICE

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration on the personal estate of Charles M. Murdock, late of Ontario, Canada, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of March, 1885

FRED. W JONES,
15 Administrator.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Eliza Young, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 9th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 9th day of April, 1885.

JOSEPHINE YOUNG,
REBECCA R. YOUNG,
IRVING WILLIAMSON, Solicitor. 15 Executrices

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Washington Law Reporter

WASHINGTON - - - - - - - - May 2, 1885.
GEORGE B. CORKHILL - - - EDITOR

WE PUBLISH this week the head-notes and a portion of the opinion of Mr. Justice Matthews in the celebrated Virginia Bond cases, decided by the United States Supreme Court at the present term. The length of the opinion prevents us from publishing it complete in the present number of the LAW REPORTER, and it will be concluded in our next. The anxiety to see the full opinion has been so great among a large number of subscribers that we should have yielded our space and published it in full this week had we received the copy in time. No abler opinion has been delivered in the court since its organization. It is an able and exhaustive review of all the authorities, and a full and complete answer to each of the various defences offered against the bonds. It is to be hoped that the decision will be accepted by the State authorities as ending the controversy, and that we shall have no further attempt to repudiate a debt honestly contracted, and settled by a compromise supposed at the time to be just and equitable.

Judge Wm. M. Merrick.

The President has appointed Hon. William M. Merrick, of Maryland, to be Associate Justice of the Supreme Court of the District of Columbia, vice Justice Andrew Wylie resigned.

Judge Merrick was born in Charles county, Maryland, and studied law in Frederick, commencing his practice at that place. His father, William D. Merrick, was a prominent man in his day, and filled several important positions in Maryland, and served in the U. S. Senate for seven years, from 1838 until 1845. Judge William Merrick quickly attained high rank at the Maryland Bar, and was soon appointed prosecuting attorney. He was appointed judge of the Circuit Court in the District of Columbia by President Pierce. This position he held until 1863, when the reorganization of the court was effected which legislated him out of office. He represented the Fifth Maryland district in Congress from 1873 to 1875. He became quite prominent in the Credit Mobiler transaction by reason of the active part which he took in uncovering that affair. After completing his term in Congress he returned to his practice in Maryland, and has since appeared in many important cases in the courts of his State.

Judge Merrick's appointment gives general satisfaction amongst the Bench and Bar of this District, and it is in every way gratifying to have so excellent and learned a man called to fulfil the duties of this important trust.

Catching a Lawyer.

The following anecdote we have never seen in print, and so let it loose upon our readers. In a town in the State of Ohio, lived a somewhat famous lawyer, whom, in order to particularize him, we will call Smith. In the same place lived a butcher whom we call Boles who did a flourishing business in his line. Smith had the misfortune to be possessed of a dog. One day the dog trotted down town, and unnaturally, as it were, steered for the meat-shop. Boles, being busy at the time, did not observe the innocent creature, and, in consequence he (the dog) quickly got outside of a large quantity of valuable soup-bones, &c. Recognizing the pup as belonging to Smith, who was his attorney, he concluded to work a little scheme. Accordingly one morning shortly after Boles called at Smith's office to obtain legal advice as to his remedy for his

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injury. After stating his case in all of its details, Smith informed him that he had a right of action against the owner of the dog, and also made some passing remarks upon the character of the citizen who would allow himself to be possessed of such a dog.

"You think that I can recover from the owner of the dog for the injury, do you?"

"Yes," said Smith; "but, perhaps, you should first demand of him sufficient to compensate you for your loss before you bring suit."

"All right. Now, Mr. Smith, I demand of *you* the sum of $3.00 for the loss of my meat."

"What! You don't mean to say—"

"Yes, I do. That was your own dog, and unless you settle with me I will act further upon your advice."

"I am sorry, Boles, that my dog has caused all of this trouble, but I will settle at once. Here is $5.00. That will make us square."

"No," said Boles, "I don't like to be hard on neighbors, I will only charge you $3.00. That is entirely sufficient. Good morning, sir."

"Hold up, Boles. We are not quite done with this case yet. You earn your money by selling meat; I, mine by my advice. My fee in this case is $10.00." Sore was Boles to pay it, but he did, and now declares that he will never, henceforth and forever, try to take in a lawyer. *Sic semper* Boles.

IN Washington Territory, one-sixth of the grand and petit juries are women. They are said to be very fond of the judicial duty imposed on them, and rarely ask to be excused from service.

THE legislatures of some of the Western States have before them bills to regulate by law the charges of telephone companies for messages and services of various kinds.

THOUGH men give you advice gratis you may be cheated if you take it.

Supreme Court District of Columbia

GENERAL TERM.

BAKER & BRO. *vs.* RAMSBURG'S SONS.

LAW. No. 23,795.

Decided March 23, 1885.
The CHIEF JUSTICE and Justices WYLIE and JAMES sitting.

Under the act of Maryland of 1715 (Statute of Limitations) the limitation begins to run on the day after the cause of action accrues.

STATEMENT OF THE CASE.

This was an action on a promissory note for $306.75, dated 5th February, 1879, made by defendants in favor of plaintiffs, and payable five months after date, at plaintiff's office, in the city of Staunton, Virginia, with interest. By the statute of Virginia the note was not entitled to days of grace, so that the note matured on the 5th of July, 1879.

The declaration was filed, summons issued, and service had on defendants July 6, 1882. Counsel for respective parties agreed that, unless the note was barred by limitations, judgment might be entered for plaintiffs. Under this agreement the only question raised in the case was whether in the computation of the three years' limitation the day when the cause of action accrued, viz., the 6th of July, 1879, was to be included or not.

The court below included that day and rendered judgment for defendants, from which the plaintiffs appealed.

C. M. MATTHEWS for plaintiffs:

The statute provides that action shall be brought "within three years ensuing the cause of such action, and not after." Act 1715, ch. 23, sec. 2.

A later part of the same section providing for limitations of actions *in tort*, "within one year from the time of the cause of action *accruing*."

The limitation *in contract* should read "within 3 years next after the cause of action accrued."

2. In the case at bar, the note was due July 5, 1879, and the defendants had all that day within which to pay; no action lay until the whole day (July 5) had expired, and the right of action did not accrue until the 6th of July, 1879. Beeman v. Cooke, 48 Vermont, 203; White-

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well v. Brigham, 19 Pick., 121, 122, and cases cited. Little v. Blunt, 9 Pick., 491; Hathaway v. Patterson, 45 Calif., 299; Davis v. Eppinger, 18 Calif., 381; Coleman v. Carpenter, 9 Barr., 179; Thomas v. Shoemaker, 6 Watts & Serg., 182.

The right of action is the right to pursue in a judicial tribunal what is due and arises when and as soon as the party has a right to apply to the proper tribunal for relief. Angell Limit., § 42.

3. The statute providing that suit shall be brought "within three years ensuing (or next after) the cause of action," (or the time of the cause of action accruing), the date, July 6, 1879, when the cause of action accrued, must be excluded from the computation of the three years.

As a general rule, where a period of time is to be reckoned from a particular event or date, whether under a contract or a statute, or in legal proceedings, the day of such date or event is to be excluded from the computation. Judd v. Fulton, Blackman v. Nearing, 43 Conn., 56; 10 Barb., 117; Paul v. Stone, 112 Mass., 27; Beaman v. Cooke, 48 Vermont, 203; Merge v. Frick, 73 Pa. St., 140; Cornell v. Moulton, 3 Denio, 13; Sheets v. Selden, 2 Wallace, 177; Bemis v. Leonard, 118 Mass., 505. Which latter case discredits the cases cited in Angell, § 45.

The terminus from which to compute time is in matters of bills and notes excluded. Angell, § 49.

It is submitted that in none of the cases cited for defendant are the facts of the present case found, and that the statute does not bar this action.

R. A. BURTON for defendants:

1. The statute begins and runs the moment credit expires or the debt has become due and demandable. Little v. Blunt, 9 Pick., 488; Hathaway v. Patterson, 45 Cal., 299; Davis v. Eppinger, 18 Cal., 381; Angell Lim., par. 42, 45, 49; Parsons Notes & Bills, vol. 2, 639, 640.

2. Plaintiff had three full years following the day on which the note matured within which to bring his action, and no longer. Presbry v. Williams, 15 Mass., 193; Hibernia Savings & Loan Society v. O'Grady, 47 Cal., 579; Beeman v. Clark, 48 Ver., 201.

Mr. Justice JAMES delivered the opinion of the court.

By the laws of Virginia, where this note was drawn and was made payable, it was not entitled to days of grace, so that it was due precisely five months after date. In other words, the maker had until the last moment of the 5th of July, 1879, for payment. Suit, however, was not brought until the 6th of July, 1882. The Statute of Limitations has been pleaded, and this raises the single question, when does the statute, as expressed in the Maryland act of 1715, which is the Statute of Limitations in force in this District begin to run?

The ordinary impression is that the statute begins to run on the very day when the cause of action accrues. The action accrued in this case on the 6th of July, 1879, because the maker of the note had until the last moment of the 5th of July, 1879, for payment. The language of the statute is that the action shall be barred unless it is brought within three years ensuing the cause of such action. The question then is whether the statute shall be deemed to commence running on the 6th of July when the cause of action accrued, or whether we shall take that as the date of the event, as we should in any other case, and hold that it begins the day after that event, namely, the day after the day on which the cause of action accrued. We have concluded that the latter is the proper construction to be given the statute. The courts of Massachusetts and Vermont include the day on which the cause of action accrues. In Pennsylvania and in New York a contrary rule is held. We found, when we came to read one of the Pennsylvania cases, that it puts the case on the same ground that this court had already determined to rest the rule upon. The Supreme Court of Pennsylvania, in the case of Merge v. Frick, 73 Pa., 140, said:

"If there be any doubt as to the particular construction and meaning of the act, the rule must now be regarded as settled that when an act of assembly requires a thing to be done within a certain time within and after a prior date, and deprives the party of the right for remit-

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ting, the most liberal construction is to be chosen and the further time given from which the reckoning is to be made."

Our reason, in view of the conflict of authorities, for excluding the date on which the cause of action accrued, was that, where a right is cut off by a statute, the proper course is to construe it in such a way as to give the largest right to a person who began with a good cause of action.

We, therefore, exclude the day on which the cause of action accrues, and hold that the statute begins running on the following day.

We render judgment for the plaintiff.

United States Supreme Court.

No. 568—OCTOBER TERM, 1884.

THOMAS POINDEXTER, Plaintiff in Error,

vs.

SAMUEL C. GREENHOW, Treasurer of the City of Richmond, Virginia.

In Error to the Hustings Court of the City of Richmond, State of Virginia.

SYLLABUS.

In an action of detinue for personal property, distrained by the defendant for delinquent taxes, in payment of which the plaintiff had duly tendered coupons cut from bonds issued by the State of Virginia under the Funding act of March 30, 1871; *Held*,

1. That by the terms of that act, and the issue of bonds and coupons in virtue of the same, a contract was made between every coupon holder and the State that such coupons should "be receivable at and after maturity for all taxes, debts, dues and demands due the State;" the right of the coupon holder under which was to have his coupons received for taxes when offered, and that any act of the State which forbids the receipt of these coupons for taxes is a violation of the contract, and void as against coupon holders.

2. The faculty of being receivable in payment of taxes was of the essence of the right. It constituted a self executing remedy in the hands of a tax payer, and it became thereby the legal duty of every tax collector to receive such coupons in payment of taxes upon an equal footing and with equal effect as though they were money. After a tender of such coupons, duly made for that purpose, the situation and rights of the tax payer and coupon holder were precisely what they would have been if he had made a like tender in money.

3. It is well settled by many decisions of this court that, for the purpose of affecting proceedings to enforce the payment of taxes, a lawful tender of payment is equivalent to actual payment, either being sufficient to deprive the collecting officer of all authority for further action, and making every subsequent step illegal and void.

4. The coupons in question are not "bills of credit," in the sense of the Constitution, which forbids the States to "emit bills of credit;" because, although issued by the State of Virginia on its credit and made receivable in payment of taxes and negotiable, so as to pass from hand to hand by delivery merely, they were not intended to circulate as money between individuals, and between government and individuals, for the ordinary purposes of society.

5. An action or suit brought by a tax payer, who has duly tendered such coupons in payment of his taxes, against the person who, under color of office as tax collector, and acting in the enforcement of a void law, passed by the legislature of the State, having refused such tender of coupons, proceeds, by seizure and sale of the property of the plaintiff, to enforce the collection of such taxes, is an action or suit against him personally as a wrong doer and not against the State within the meaning of the Eleventh Amendment to the Constitution of the United States.

6. Such a defendant, sued as a wrong doer, who seeks to substitute the State in his place, or to justify by the authority of the State, or to defend on the ground that the State has adopted his act and exonerated him, cannot rest on the bare assertion of his defence, but is bound to establish it; and, as the State is a political corporate body, which can act only through agents, and command only by laws, in order to complete his defence he must produce a valid law of the State which constitutes his commission as its agent, and a warrant for his act.

7. The act of the general assembly of Virginia of January 26, 1882, "to provide for the more efficient collection of the revenue to support government, maintain the public schools, and to pay interest on the public debt," requiring tax collectors to receive in discharge of the taxes, license taxes and other dues, gold, silver, United States Treasury notes, national bank currency, and nothing else, and thereby forbidding the receipt of coupons issued under the act of March 30, 1871, in payment therefor, although it is a

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legislative act of the government of Virginia, is not a law of the State of Virginia, because it impairs the obligation of its contract, and is annulled by the Constitution of the United States.

8. The State has passed no such law, for it cannot; and what it cannot do in contemplation of law, it has not done. The Constitution of the United States, and its own contract, both irrepealable by any act on its part, are the law of Virginia, and that law made it the duty of the defendant to receive the coupons tendered in payment of taxes, and declared every step to enforce the tax thereafter taken to be without warrant of law and therefore a wrong. This strips the defendant of his official character, and convicts him of a personal violation of the plaintiff's rights, for which he must personally answer.

9. It is no objection to the remedy in such cases that the statute, the application of which in the particular case is sought to be prevented, is not void on its face, but is complained of only because its operation in the particular instance works a violation of a constitutional right, for the cases are numerous where the tax laws of a State, which in their general and proper application are perfectly valid, have been held to become void in particular cases, either as unconstitutional regulations of commerce, or as violations of contracts prohibited by the Constitution, or because in some other way they operate to deprive the party complaining of a right secured to him by the Constitution of tne United States.

10. In cases of detinue the action is purely defensive on the part of the plaintiff. Its object is merely to resist an attempted wrong, and to restore the *status in quo* as it was when the right to be vindicated was invaded. It is analogous to the preventive remedy of injunction in equity when that jurisdiction is invoked, of which frequent examples occur in cases to prevent the illegal taxation of national banks by State authorities.

11. The suit authorized by the act of the General Assembly of Virginia of January 26th, 1882, against the collector of taxes, refusing to accept a tender of coupons, to recover back the amount paid under protest, is no remedy at all for the breach of the contract, which required him to receive the coupons in payment. The tax payer and coupon holder has a right to say he will not pay the amount a second time, and, insisting upon his tender as equivalent to payment, to resist the further exaction, and treat as a wrong-doer the officer who seizes his property to enforce it.

12. Neither can it be considered an adequate remedy, in view of the supposed necessity for summary proceedings in matters of revenue, and the convenience of the State, which requires that the prompt collection of taxes should not be hindered or embarrassed; for the revenue system must yield to the contract which the State has lawfully made, and the obligation of which, by the Constitution, it is forbidden to impair.

13. The right to pay in coupons cannot be treated as a mere right of set-off, which is part of the remedy merely, when given by the general law, and therefore subject to modification or repeal, because the law which gave it is also a contract, and therefore cannot be changed without mutual consent.

14. The acts of the General Assembly of Virginia of January 26th, 1882, and the amendatory act of March 13th, 1884, are unconstitutional and void, because they impair the obligation of the contract of the State with the coupon holder under the act of March 30th, 1871; and that being the main object of the two acts, the vice which invalidates them pervades them throughout, and in all their provisions. It is not practicable to separate those parts which repeal and abolish the actions of trespass, and trespass on the case, and other particular forms of action, as remedies for the tax payer, who has tendered his coupons in payment of taxes, from the main object of the acts, which that prohibition was intended to effectuate; and it follows that the whole of these and similar statutes must be declared to be unconstitutional, null and void. It also follows, that these statutes cannot be regarded in the courts of the United States as laws of the State, to be obeyed as rules of decision in trials at common law, under Sec. 721, Rev. Stats., nor as regulating the practice of those courts, under Sec. 914, Rev. Stats.

15. The present case is not covered by the decision in Antoni v. Greenhow, 107 U. S., 769, the points now involved being expressly reserved in the judgment in that case.

OPINION.

Mr. Justice MATTHEWS delivered the opinion of the court.

The plaintiff in error, who was also plaintiff below, brought his action in detinue on the 26th day of April, 1883, against Samuel C. Greenhow, for the recovery of specific personal property, to wit, one office desk of the value of thirty dollars, before a police justice in the city of Richmond, who dismissed the same for want of jurisdiction. An appeal was taken by the plaintiff to the Hustings Court for the city of Richmond, where the facts were found by agreement of

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parties to be as follows: That the plaintiff was a resident of the city of Richmond, in the State of Virginia; that he owed to the State of Virginia, for taxes on property owned by him in said city for the year 1882, twelve dollars and forty-five cents, which said taxes were due and leviable for, under the laws of Virginia, on the 1st day of December, 1882; that the defendant, Samuel C. Greenhow, was the treasurer of the city of Richmond, and as such is charged by law with the duty of collecting taxes due to the State of Virginia by all residents of said city; that on the 25th day of April, 1883, the defendant, as such treasurer and collector of taxes, made upon the plaintiff demand for the payment of the taxes due by him to the State as aforesaid; that the plaintiff, when demand was so made for payment of his taxes, tendered to the defendant in payment thereof forty-five cents in lawful money of the United States, and coupons issued by the State of Virginia under the provisions of the act of the General Assembly of that State of March 30, 1871, entitled, "An act to provide for the funding and payment of the public debt;" that said coupons so tendered by plaintiff were all due and past maturity, and amounted in the aggregate to twelve dollars, and were all cut from bonds issued by the said State of Virginia under the provisions of the said act of March 30, 1871; that the said coupons and money so tendered by the plaintiff amounted together to exactly the sum so due the State by the plaintiff for taxes; that the defendant refused to receive the said coupons and money so tendered in payment of the plaintiff's taxes; that the defendant, after said tender was made, as he deemed himself required to do by the acts of assembly of Virginia, entered the plaintiff's place of business in said city and levied upon and took possession of the desk, the property of the plaintiff, now sued for, for the purpose of selling the same to pay the taxes due from him; and that the said desk is of the value of thirty dollars, and still remains in possession of the defendant for the purpose aforesaid, he having refused to return the same to the plaintiff on demand.

The Hustings Court was of the opinion that the police justice erred in deciding that he had no jurisdiction, and that the issue in the action might have been tried by him, and that it should be tried by that court on the appeal; but it was also of the opinion that in tendering to the defendant, as part of the tender in payment of the plaintiff's taxes, the coupons mentioned and described, the plaintiff did not tender what the law required, nor what the defendant was, as treasurer, obliged to or should have received in payment of the plaintiff's taxes, under the provisions of the act of the General Assembly of Virginia, approved January 26, 1882, entitled, "An act to provide for the more efficient collection of the revenue to support government, maintain the public schools, and to pay interest on the public debt;" that the plaintiff's remedy for the failure of the defendant, as treasurer, to receive coupons in payment of taxes, was to be found in the provisions of said act of January 26, 1882; and that, therefore, the defendant does not unlawfully or wrongfully detain the plaintiff's property levied on by the defendant, as treasurer of the city of Richmond, for the plaintiff's taxes; and judgment was accordingly rendered for the defendant.

It appears from the record that there was drawn in question the validity of the said act of the General Assembly of Virginia, approved January 26, 1882, and of the 18th section of the act of the General Assembly of the State of Virginia, approved April 1st, 1879, which authorizes the collection of delinquent taxes by distraint of personal property, upon the ground that these acts are repugnant to section 10 of Article I of the Constitution of the United States, which declares that no State shall pass any law impairing the obligation of contracts, the judgment of the court being in favor of the validity of said acts and against the rights claimed by the plaintiff under the Constitution of the United States. The Hustings Court is the highest court of the State to which the said cause could be taken.

The act of January 26, 1882, the validity of which is thus questioned, is as follows:

"*Be it enacted by the General Assembly of the State of Virginia*, That the several tax collectors of this Commonwealth shall receive, in discharge of the taxes, license taxes and other dues, gold, silver, United States treasury notes, national bank currency, and nothing else; provided, that in all cases in which an officer charged by law with the collection of revenue due the State, shall take any steps, for the collection of same, claimed to be due from any citizen or tax payer, such person against whom such step is taken, if he conceives the same to be unjust or illegal, or against any statute, or to be unconstitutional, may pay the same under protest, and under such payment the officer collecting the same shall pay such revenue into the State treasury, giving notice at the time of such payment to the treasurer that the same was paid under protest. The person so paying such revenue may, at any time within thirty days after making such payment, and not longer there-

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after, sue the said officer so collecting such revenue in the court having jurisdiction of the parties and amounts.

"If it be determined that the same was wrongfully collected, for any reason going to the merits of the same, then the court trying the case may certify of record that the same was wrongfully paid and ought to be refunded; and, thereupon, the auditor of public accounts shall issue his proper warrant for the same, which shall be paid in preference to other claims on the treasury, except such as have priority by constitutional requirement.

"There shall be no other remedy in any case of the collection of revenue, or the attempt to collect revenues illegally, or the attempt to collect revenue in funds only receivable by said officers under this law, the same being other and different funds than the tax payer may tender or claim the right to pay, than such as are herein provided; and no writ for the prevention of any revenue claim, or to hinder or delay the collection of the same, shall in anywise issue, either injunction, *supersedeas*, *mandamus*, prohibition, or any other writ or process whatever; but in all cases, if, for any reason, any person shall claim that the revenue so collected of him was wrongfully or illegally collected, the remedy for such person shall be as above provided, and in no other manner. In all such cases, if the court certify of record that the officer defendant acted in good faith and diligently defended the action, the necessary costs incurred by him shall be taxed to and paid by the State, as in criminal cases. The commonwealth attorney for the county or corporation in which suit is brought, shall appear and represent the defence. In every case where judgment is rendered for the defendant, a fee of five dollars shall be taxed in favor of said attorney and against the plaintiff, and whenever the court shall refuse to certify the good faith and diligence of the officer defending the case, a like fee of five dollars shall be taxed against said officer. Any officer charged with the collection of revenue, who shall receive payment thereof in anything other than that hereinbefore provided, shall be deemed guilty of a misdemeanor, and fined not less than one hundred nor more than five hundred dollars, in the discretion of the court; but nothing herein contained shall be construed to subject any officer of the State to any suit, other than as hereinbefore provided, for any refusal on his part to accept in payment of revenue due the State, any kind or description of funds, security or paper not authorized by this act.

"2. This act shall be in force from and after the first day of December, eighteen hundred and eighty-two."

The 18th section of the act of April 1, 1879, (Acts of 1878–9, p. 318), so far as material, is, that "It shall be the duty of the treasurer, after the first day of December, to call upon each person chargeable with taxes and levies, who has not paid the same prior to that time, or upon the agent of such person resident within the county or corporation, and, upon failure or refusal of such person or agent to pay the same, he shall proceed to collect by distress or otherwise." Goods and chattels distrained by an officer, by provisions of the statutes then in force, were required to be sold at public sale after due notice as prescribed.

The act of January 26, 1882, was amended by an act which was passed and took effect March 13, 1884, by the addition of the following sections:

"§ 2. Whenever any papers purporting to be coupons cut from bonds of this State, shall be tendered to the collecting officer in payment of any taxes due to the State by any party desiring to bring a suit under this statute, it shall be the duty of the collecting officer to place the coupons so tendered in an envelope, to seal the said envelope, write his name across the seal thereof, endorse it with the numbers of the coupons enclosed, and return it to the tax payer. Upon the trial of any proceeding under this act, the said coupons, enclosed in the said envelope so sealed and endorsed, must be produced in evidence to prove the tender. If the court shall certify that the money paid under protest ought to be refunded, the said coupons shall be delivered to the auditor of public accounts, to be cancelled simultaneously with the issue of his warrant.

"§ 3. No action of trespass or trespass on the case shall be brought or maintained against any collecting officer for levying upon the property of any tax payer who may have tendered in payment, in whole or in part, any coupon, or paper purporting to be a coupon, cut from bonds of this State for such taxes, and who shall refuse to pay his taxes in gold, silver, United States Treasury notes, or national bank notes. The suit contemplated by this act shall be commenced by a petition filed at rules, upon which a summons shall be issued to the collecting officer; and the said suit shall be regularly matured like other actions at law, and the coupons tendered shall be filed with said petition."

The contract which the plaintiff in error alleges has been violated is with the State of Virginia, and is contained in the act of March

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30, 1871, known as the Funding Act, entitled "An act to provide for the funding and payment of the public debt," and in the bonds and coupons issued under its authority. It provided for the funding of two-thirds of the existing State debt and of two-thirds of the interest accrued thereon to July 1, 1871, in new six per cent. bonds, to run thirty-four years, the bonds, coupon or registered, payable to order or bearer, and the coupons to bearer, and declared that the coupons should be payable semi-annually and "be receivable at and after maturity for all taxes, debts, dues and demands due the State," and that this should be expressed on their face. For the remaining one-third, certificates were to be issued to the creditors to hold as claims against the State of West Virginia, that being assumed as her just proportion of the entire debt. "Under this act," it was said by this court, in Hartman v. Greenhow, 102 U. S., 672, 679, "a large number of the creditors of the State, holding bonds amounting, including interest thereon, to about thirty millions of dollars, surrendered them and took new bonds with interest coupons annexed for two-thirds of their amount and certificates for the balance. A contract was thus consummated between the State and the holders of the new bonds and the holders of the coupons, from the obligation of which she could not, without their consent, release herself by any subsequent legislation. She thus bound herself, not only to pay the bonds when they became due, but to receive the interest coupons from the bearer at and after their maturity, to their full amount, for any taxes or dues by him to the State. This receivability of the coupons for such taxes and dues was written on their face, and accompanied them into whatever hands they passed. It constituted their chief value, and was the main consideration offered to the holders of the old bonds to surrender them and accept new bonds for two-thirds of their amount."

The same view had been taken by the Supreme Court of Appeals of Virginia, in the case of Antoni v. Wright, 22 Gratt., 833; Wise v. Rogers, 24 Gratt., 169, and Clarke v. Tyler, 30 Gratt., 134, in the last of which cases it was declared to be the settled law of the State. It was repeated by this court in Antoni v. Greenhow, 107 U. S., 769, where it was said, p. 775, "The right of the coupon-holder is to have his coupon received for taxes when offered," and page 771, "Any act of the State which forbids the receipt of these coupons for taxes is a violation of the contract, and void as against coupon-holders." Upon these propositions, there was an entire agreement between the majority and the minority of the Court in that case.

The nature and value of this contract right to the coupon-holder deserve to be further explained. It was evidently a part of the consideration on which the creditors of the State were induced to accept, under the act of March 30, 1871, from the State of Virginia, new obligations for two-thirds of their claim, in exchange for the surrender of the original bonds. The latter depended for their payment, as to both principal and interest, upon the continued good faith of the State in making, from time to time, necessary appropriations out of the public treasury, to meet its recurring liabilities, by positive legislation to that effect. In case of default there was no remedy by legal process. The State itself could not be sued. Its bare promises to pay had no sanction but the public sense of duty to the public creditors. The only security for their performance was the public faith.

But immediately on the passage of the act of March 30, 1871, and thereafter, occasional or continued default in the payment of interest on the bonds issued in pursuance of its provisions, by reason of failures to provide by laws necessary appropriations for its payment, was met, if not obviated, by a self-executing remedy lodged by the law in the hands of the creditor himself. For, from that time, it became the legal duty of every tax collector to receive coupons from these bonds, offered for that purpose by tax-payers, in payment of taxes, upon an eqnal footing, at an equal value, and with equal effect, as though they were gold or silver or legal-tender treasury notes. They were by that act, reduced, in effect, into money, and, as between the State and its tax payers, were a legal tender as money. And, being not only a law but a contract, it became, by force of the Constitution of the United States, irrepealable, and, therefore, is to-day, what it was when first enacted, the unchangeable law of Virginia. After a tender of such coupons by a tax-payer in payment of taxes, and a refusal by a tax-collector to receive them, the situation and rights of the tax-payer and coupon-holder were precisely what they would have been if he had made a like tender in gold and it had been refused. What they would be we shall have occasion presently to inquire. In the meantime, it is clear that the contract obligation embodied in the quality imparted by law to these coupons, of being receivable in payment of taxes, is a distinct, collateral and real security, placed in the hands of the creditor, intended to enable him to collect them without process of law. As long as the

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annual taxes of the State are sufficient in amount to absorb all coupons that are overdue and unpaid, a certain market is created for them, which will maintain them at or near their par value. In the hands of the taxpayer who buys them for tender, they are practically no longer *choses in action*, but equal in value and quality to money, and equivalent to receipts for taxes already paid.

(*To be continued next week.*)

United States Court of Claims

HENRY F. PITMAN ET AL.
vs.
THE UNITED STATES.

1. The Court of Claims cannot take cognizance of a claim transmitted to it under the Bowman act, unless it is one which the Department itself might settle and adjust, and which is rightly pending there.
2. A claim which on its face has no foundation in law, cannot be pending, within the meaning of the act, in any Department.
3. The United States is not responsible for the torts of its officers; and a claim for damages on account of such torts is not within the jurisdiction of the Executive Departments.
4. It is not the duty of the head of a Department to make estimates for appropriations to pay claims for which the Government is not legally liable.
5. The provision of the Bowman act to afford assistance and relief to the Departments, apply only to such claims as are founded on legal rights, and not to extra official investigations.

RICHARDSON, C. J., delivered the opinion of the court:

This case was transmitted to the court by the Secretary of the Navy, under the Bowman act (22 Stat. L., 485, and 18 C. Cls., XXV), by the following letter:

"NAVY DEPARTMENT,
"*Washington, January* 30, 1885.

"*The Honorable the Court of Claims,*
"*Washington, D. C.:*

"Under the provision of the second section of the act entitled 'An act to afford assistance and relief to Congress and the Executive Departments in the investigation of claims and demands against the Government,' approved March 3, 1883, and in compliance with the request of counsel for claimants, I have the honor to transmit herewith a claim growing out of the collision between the United States steamship Minnesota and the schooner Abbie Pitman, which occurred in the navigable waters of the United States, on the 17th day of October, 1879. The claim, as presented in a letter dated January 11, 1885, addressed to this Department by Hon. Benjamin F. Butler, of counsel for claimants, a copy of which is inclosed, amounts to $46,159.01.

* * * * * *

"WM. E. CHANDLER,
"*Secretary of the Navy.*"

The claimants came in, April 2, 1885, and filed their petition, alleging substantially that they were the owners of the schooner Abbie Pitman; that on October 17, 1879, without fault of her officers, she was run into, upon navigable waters, by the United States steamer Minnesota, and was lost in consequence thereof. The concluding allegations and prayer are as follows:

"Your petitioners further show that said collision was caused solely by the negligence of the officers and crew of said steamer, and that said schooner, as the result thereof, became a total wreck, to the damage of your petitioners $10,000, her value, including her rigging and equipment, and $150 additional, the value of her freightage earned on said trip at the time of said collision.

"That your petitioners have presented this claim to the honorable the Secretary of the Navy, who did not allow nor pay the same, but referred it to this honorable court, under the provisions of the act of Congress, approved March 3, 1883, entitled, 'An act to afford assistance and relief to Congress and the Executive Departments in the investigation of claims and demands against the Government,' in order that it may investigate the same and report its findings of fact to the honorable the Secretary of the Navy.

"Wherefore your petitioners pray that this honorable court will proceed to consider this claim, and to make its findings of fact thereon, and report the same to the honorable the Secretary of the Navy, under the requirements of said act."

The Assistant Attorney-General has filed a motion to dismiss the case for want of jurisdiction, and on that motion issue is joined.

We have heretofore held that to enable the court to take cognizance of a claim transmitted to it by the head of a Department under the Bowman act, it must appear that such claim was one which that Department had authority to settle or adjust, as had previously been held in relation to claims transmitted under section 1063 of the Revised Statutes. McClure and Porter's Case, 19 C. Cls., 30; Hart's Case, 15 C. Cls., 414.

The Bowman act provides:

"SEC. 2. That when a claim or matter is pending in any of the Executive Departments which may involve controverted questions of fact or law, the head of such Department may

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transmit the same, with the vouchers, papers, proofs, and documents pertaining thereto, to said court, and the same shall be there proceeded in under such rules as the court may adopt.

"When the facts and conclusions of law shall have been found, the court shall not enter judgment thereon, but shall report its findings and opinions to the Department by which it was transmitted for its guidance and action."

A claim cannot be held to be pending in an Executive Department which has no authority in law to settle, adjust, or take cognizance of it. A claim for carrying the mails under contract with the Post Office Department, could not be pending in the War Department, even though it might be presented there, and the Secretary asked to take it up for consideration, nor could a claim which on its face has no foundations in law anywhere be pending in any Executive Department.

The question, then, is whether or not the present claim, transmitted here by the Secretary of the Navy, was within the jurisdiction of his Department, and was rightly pending there. To this the answer must be in the negative.

We have uniformly held that the Departments have no cognizance of claims for unliquidated damages founded on neglect or breach of duty of public officers, even where they grow out of the non-performance of written contracts, other than in the payment for work actually done or material furnished and received; and this, too, where the claimant might maintain an action therefor in this court. (Dennis' Case, *ante;* Brannen's Case, *ante*, and numerous authorities there cited.) In addition to that, the present claim is for damages on account of an alleged tort by public officers, for which the Government is never responsible. Gibbons v. United States, 8 Wall., 269, and 7 C. Cls., 105; Morgan v. United States, 14 Wall., 531.

Judge Story, in his work on Agency, section 319, says:

"It is plain that the Government itself is not responsible for the misfeasances, or wrongs, or negligences, or omissions of duty of the subordinate officers or agents employed in the public service; for it does not undertake to guarantee to any person the fidelity of any of the officers or agents whom it employs, since that would involve it, in all its operations, in endless embarrassments and difficulties and losses, which would be subversive of the public interests."

It will be seen that the Bowman act requires the court to report its findings of fact and conclusions of law, with its opinion, to the Department by which the case was transmitted, for its guidance and action. To make a detailed findings of facts, when, from the petition itself and the papers referred, taking the facts alleged in the light most favorable to the claimant, it is clear that the only conclusion of law which could be reached must be that the defendants are not legally liable, would be a useless proceeding.

Seeing that difficulty, no doubt, the learned counsel for the claimant, in drawing the petition, confines the prayer thereof to a request for a mere finding of facts to be reported back to the Secretary of the Navy. And at the argument it was urged that the Secretary might take action upon such finding, by making an estimate, to be sent to Congress through the Secretary of the Treasury, for an appropriation to pay whatever damages it appeared that the claimant had suffered by reason of the acts complained of, and for that purpose he had cognizance and jurisdiction of the claim.

We do not find it to be within the official duties of the head of any Department to make estimates for appropriations to pay claims which the Government is not in law bound to pay, however much they may be urged so to do by claimants who feel aggrieved by the tortious conduct of public officers. An Executive Department is not the place to apply for redress of grievances not founded on legal rights.

A careful examination of the numerous sections of the statutes in relation thereto plainly shows that Congress has intended to confine the estimates for appropriations by the heads of Departments to expenditures required under existing laws, and such expenditures as may necessarily be required for the exigences of the public service during the ensuing year. (Rev. Stats., secs. 3660, 3671.) The first section of the chapter of the Revised Statutes upon appropriations requires the heads of Departments in communicating estimates "to give references to any law or treaty by which the proposed expenditures are, respectively, authorized, specifying the date of each, and the volume and page of the Statutes at Large or of the Revised Statutes, as the case may be, and the section of the act in which the authority is to be found." R. S., section 3660.

The fact that heads of a Department have in some cases made estimates and asked Congress to make appropriations for the payment of such damages as are claimed in this case does not show that such a course ever was within their official duties. They undoubtedly have the *power* to do so, but the provisions

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of the act of Congress to afford assistance and relief to the Executive Departments in the investigation of claims and demands against the Government must be construed to apply only to such as are founded on legal rights, and not to extra official investigations.

The defendants' motion to dismiss the petition is allowed. The clerk will transmit a copy of this opinion to the Secretary of the Navy.

The Granting of Licenses.

Judge Agnew, in delivering the unanimous decision of the Supreme Court in Schlaudecker v. Marshall, 72 Pa. State Reports, 200, says:

"No subject has been productive of more difference of opinion and practice than this in the different judicial districts of the State, some judges holding it to be obligatory on the court to grant every license where the applicant has brought himself within the provisions of the law as to the terms of his application, and others holding that they are not bound to grant any license whatever. Clearly neither opinion is right; the discretion which the court exercises being a sound discretion upon the circumstances of each case as it is presented to the court, and not a general opinion upon the propriety or impropriety of granting licenses.

"Whether any or all licenses should be granted is a legislative, not a judicial question. Courts sit to administer the law fairly as it is given to them, and not to make or repeal it. The law of the land has determined that licenses shall exist, and has imposed upon the court the duty of ascertaining the proper instances in which the license shall be granted, and therefore has given it to the court to decide upon each case, as it arises in the course of law. The act of deciding is judicial, and not arbitrary or wilful. The discretion vested in the court is, therefore, a sound discretion; and to be a rightful judgment, it must be exercised in the particular case, and upon the facts and circumstances before the court, after they have been heard and duly considered; in other words, to be exercised upon the merits of each case according to the rule given by the Act of Assembly. To say that I will grant no license to any one, or that I will grant it to every one, is not to decide judicially on the merits of the case, but to determine beforehand without a hearing, or else to disregard what has been heard. It is not a legal judgment, but the exercise of an arbitrary will."

A JUDGE of a court in a Southern State is reported in one of our exchanges as having made the following remarks, in passing sentence on a convicted prisoner:

"Jim, stand up! The jury that tried you found you guilty of highway robbery, and assessed your punishment at fifteen years in the penitentiary, You had a fair trial. The two young lawyers I assigned to you as counsel did everything for you that could be done. Now, I don't say you're guilty. I wouldn't say that. But the circumstances are suspicious. Somebody wasrobbed on the highway of $70, three $20 bills and a $10 bill. It was proved you changed two $20 bills shortly after, and your wife changed another, and you didn't show how you came by these bills. Now, if I had been accused of this offence unjustly, I would have said, why, I got this money from so and so, and then call that person as a witness. But you didn't do that, and your case looks bad. However, if you are innocent, think what a satisfaction it will be to you, as you enter the penitentiary, to feel in your breast that you are an innocent man! And now, let me give you a piece of advice. You have only got a sentence of fifteen years. Had you been a white man, the jury would have given you a much larger sentence. But we white people have compassion on you colored people. We remember your want of education and make allowances for you. My advice is: behave yourself while you are in the penitentiary. If you do, you will have to serve only eleven years and three months. Think of that. If you do behave, the warden will at the end of that time report to the Governor, and he will pardon you. Mind you, the Governor has no discretion when the warden makes his favorable report. He's got to do it, and I don't suppose the Governor would shirk his duty. Sit down, Jim!"

Constitutional Law: Domestic Wines; Statutory Conitruction.—That clause of section 5942 of the Revised Statutes, which provides that "the provisions of the last section concerning the sale of intoxicating liquors to the sale of wine manufactured from the pure juice of the grape cultivated within this State," is not in conflict with section eight, article one, of the Constitution of the United States, which gives to Congres the exclusive power "to regulate commerce with foreign nations and among the several States, and with the Indian tribes." [McGuire v. State; S. C. Ohio, Jan. 20, 1885; 2 Am. Law Jour., 335.]

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Equity Pleading: Complainant Non Compos Mentis.—A plea alleging that complainant "was at the time of the commencement of the suit *non compos mentis* and incapable to sue," but failing to allege that he has been so found by inquisition or that any committee has been appointed, is bad. [Dudgeon v. Watson; U. S. Cir. Ct., S. D. N. Y., March 7, 1885; 23 Fed. Rep., 23 Fed. Rep., 161.]

Equity Practice: Motion to Strike Bill from Files; Stay.—The proper practice in such a case is by an application to the court to strike the bill from the files because filed without authority, or to apply for a stay of proceedings until a committee or next friend may be appointed. *Ibid.*

Practice: Taking Deposition In Common Law Actions; By What Law Governed; Rev. Stat. U. S., §§ 861, 863, 867, 914.—The right to take testimony by deposition in common law causes pending in the Federal courts, depends upon the statutes of the United States, and not the statutes of the States in which such courts are held; but when such right does exist under the United States statutes, as to the mere mode of procuring the deposition, the parties may follow, at their election, either the provisions of the State law, or of the act of Congress. [McLennan v. Kansas City, St. J. & C. R. R. Co. U. S. C. C., S. D. Ia. 22 Fed. Rep., 198.]

The Courts.

SUPREME COURT OF THE DISTRICT OF COLUMBIA

GENERAL TERM.

April 28, 1885.

Westham Granite Co v Chandler. Decree.

Patent appeal of Charles Heaton. Appeal denied.

April 29 1885.

U. S. v. Wm. Walsh and Frederick Joseph Arguments on exceptions taken to rulings in criminal court.

April 30, 1885.

Same. Decree of special term affirmed.

Jeremiah Costello. use of F. H. Mackey, v. C. H. Knight. Argued and submitted.

CIRCUIT COURT.—New Suits at Law.

April 25, 1885

26118. Louis R. Bart v. Met. Life Ins. Co., of New York. Appeal. Defts atty, Jas. Fullerton.

April 27, 1885.

26119. Wm. F Hornbach v. Martha Koehler. Certiorari Defts atty, A. K. Browne.

26120 Wm. Dickson v Benjamin H Brewster. Slander, $50,000. Piffs attys, Miller and Smith.

April 28, 1885.

26121 Lucy L Whitham et al. v Thomas Greer, Ex'r. Issues from probate, Defts atty, M. F. Morris.

26122. Charles R Monroe v. Wm. M. Galt Acct., $200 Piffs attys, Edwards & Barnard.

26123. Justin Wertheimber v. Samuel Goldstein. Notes, $2.498 99. Piffs atty, W. F. Mattingly.

April 29, 1885.

26124. Junius Simons v. Alexander Leadingham et al Damages, $30,000. Piffs atty, J. J. Johnson.

26125. The Maryland Coal Co. v. A. M. Brandt. Acct., $10,856.26. Piffs atty, M. F. Morris.

26126 Joseph A. Taylor v. Charles M. Bell. Note $400, Piffs attys, Pairo and Perrine.

April 30, 1885.

26127. John Bowles v. James E. Miller. Appeal. Defts attys, Carusi & Miller.

26128 Julius Lansburgh v. Charles W. Tankersly. Acct, $257 27. Piffs atty, L Tobriner.

May 1, 1885.

26129 Charles H. Weser v George D. De Shields. Acct, $117 Piffs atty, E. H. Thomas

26130 Westcott & Wilcox v. William L. Riley. Plea of title Piffs attys, Totten and McKenny.

26131 Walter R Wilcox v Bettie McDaniel Plea of title. Piffs attys, Same.

IN EQUITY.—New Suits.

April 25, 1885.

9414 Charles E. Creecy v. John P. D. Caton. Injunction. Com sol, V. B. Edwards.

April 25, 1885.

9415. John J. Allbright v. Richard S Hardesty et al. To appoint trustee Com sols, Worthington & Heald.

April 27, 1885.

9416. W. W. Dannenhower et al. v. Amelia J. Purrington. To enjoin suit at law. Com sols. Mattingly & Browning.

April 29, 1885

9417. Stephen H. Sherman; alleged lunatic. Upon petition of Amelia Sherman inquiry into lunacy. Com sols. Thomas and Taylor.

9418. Jeremiah Dinneen v. Ellen Dinneen. For divorce. Com sol J. A Smith.

May 1, 1885

9419. William E. Burford v. John Alcorn et al Specific performances. Com sol, F. T. Browning.

May 2, 1885.

9420. James Crutchett v. The Washington Gas Light Co. For an account Com sol, J. Ambler Smith

9421. Franklin Schoyer v. Cora Schoyer. For divorce. Com sol, H. T. Taggart.

9422 Hugh Donoho v William S. Shepherd et al. For conveyance. Com sols, Hanna & Johnston.

PROBATE COURT.—Justice Hagner.

May 1, 1885

Estate of Joseph Smith, late rear admiral U. S N. Exemplified copy of substitution of name of trustees.

Estate of Margaret Bain. Will received for probate.

Estate of Samuel Queen. Will admitted to probate and letters testamentary granted to Ann W. Queen on bond of $2,500.

Estate of William A. Webster. Letters testamentary granted to Catharine Webster on bond of $700.

Estate of Robert Davidson. Time extended to take testimony.

Estate of Sophia Bender. Letters testamentary granted to Susan L Dubant. Bond, $1 000.

Estate of Louis Otterbach. Referred to examiner to take testimony.

Estate of John E. Kendall Will admitted to probate and letters of administration ordered to issue to John Blake Kendall on bond of $75,000.

Estate of Robert A. Reynolds. Letters of administration granted to Clinton Reynolds.

Estate of Patrick Cullinane. Letters testamentary granted to Edward D. Donnelly and James T. Cullinane on bond of $19,000

Estate of George Rich. Margaret S. Rich appointed guardian to George H., Margaret J., Caroline A. L. and Maud T. Muller.

Estate of William H. Marders. Letters testamentary granted to Alice I. McCauley.

Estate of Ann Pinion. Will admitted to probate and letters granted to John K. King.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, this 1st day of May, 1885

JAMES B. HOUSTON v. MARY T GARLAND ET AL. } In Equity. No. 8662.

Ordered this 1st day of May, 1885. that the offer of Dwight J. Partello, to purchase at private sale the west 24.70 feet by depth of lot seven in square one twenty-one and improvements, as reported by the trustees herein, be, and the same is, hereby accepted and the said sale is hereby ratified and confirmed unless cause to the contrary be shown on or before June 2nd, 1885 Provided a copy of this order be published once a week for three successive weeks prior to said day in the Washington Law Reporter.

The report states the amount of sales at $5,500.

By the Court. A. B HAGNER, Justice.

True copy. Test: 18 R. J. MEIGS, Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business. April 28th, 1885

In the matter of the Estate of Caroline Burnet Hornblower, late of the City of Washington, District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by Joseph P. Bradley, of Washington, D C.

All persons interested are hereby notified to appear in this Court on Friday, the 22d day of May next, at 11 o'clock, a m, to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B HAGNER, Justice.
Test: 18 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. April 28th, 1885.

In the matter of the Estate of Sarah Otterback, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Henry B. Otterback, who prays that Thomas E. Young and Lewis E. Tavenner may be associated with him,

All persons interested are hereby notified to appear in this court on Friday, the 22d day of May, next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

By the Court. A. B HAGNER, Justice.
Test: H. J. RAMSDELL, Register of Wills.
W. WILLOUGHBY, Solicitor. 18

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 28th day of April, 1885.

MARY S. LAMBELL by MARY J RIPLEY, her next friend, Complainant,
v
ROSA M. EVANS ET AL., Defendants
} No. 9402. Equity.

On motion of the complainant, by Messrs. Hagner & Maddox, her solicitors, it is ordered that the defendants, Joseph O. Evans, William L. Kimmell and Alice Kimmell, his wife, Andrew J Kimmell and Gertrude Kimmell, his wife, Frank Kimmell and Ellen Kimmell, his wife, Mary E S Kimmell Elizabeth Mann and Charles Mann, her husband, and Edward M Burchard, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default

By the Court. A B. HAGNER, Justice.
A true copy. Test: 18 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 1st day of May, 1885.

JOHN HITZ
v
GERTRUDE HITZ ET AL.
} No 9036. Equity.

On motion of the plaintiff, by Mr. W. B. Webb, his solicitor, it is ordered that the defendants, John C. Casparis, and Alexander L. Casparis, cause their appearance to be entered herein onor before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
True copy. Test 18 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business. Letters of Administration on the personal estate of Dennis Austin McCarthy, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 27th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of April, 1885

ANNE McCARTHY,
S. S. HANKIN, Solicitor. 18 Administrator.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of John Diggan, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 24th day of March, 1885.

BENJAMIN F. RITTENHOUSE,
GORDON & GORDON, Solicitors. 18 Administrator c t a.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John Feldman, late of the District of Columbia, dec'd

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 24th day of March, 1885.

BENJAMIN F. RITTENHOUSE,
GORDON & GORDON, Solicitors 18 Administrator

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business. Letters Testamentary on the personal estate of Edward M Spedden, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of April, 1885.

I. L JOHNSON,
18 Executor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

DOUGLAS ET AL.
v
WILLIAMS ET AL.
} No. 8909. Eq. Doc., 23.

Irwin B. Linton, trustee herein, having reported a sale of part of lot numbered five (5) in square numbered one hundred and seventeen (117) in the city of Washington, District of Columbia, being the west sixteen (16) feet front on north L street, of said lot five (5) by the depth thereof, with the improvements and appurtenances to Charles B. Bailey, for the sum of six hundred and seventy (670) dollars.

It is, this 22d day of April, A. D. 1885, ordered that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 18th day of May, 1885. Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said day

By the Court. A B HAGNER, Justice.
A true copy 17-3 Test: R J. Meigs, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

MARY LOMAX TAYLOR ET AL., Complainants,
v.
EUGENE PHEBE WARREN ET AL, Defendants.
} Equity. No. 9269.

On consideration of the report of the trustees, George F. Appleby, William E Edmonston and William Taylor Snyder, herein filed, recommending that authority be given them by the court to accept the bid of W L. Brown for the purchase of lots 10 and 11 in square No. 221 in Washington City, D. C, (the same being the property known as 21 Madison Place, and the residence of the late Benj. Ogle Taylor, dec'd) at and for the sum of fifty six thousand dollars ($56,000), payable one-third cash and residue in 1, 2, 3 and 4 years with interest at 6 per centum per annum from day of sale to him until paid, it is, this twenty-second day of April, A. D 1885, ordered by the court that the trustees accept said bid and sell the said property to the said W. L. Brown for the said sum of $56,000 on terms aforesaid, unless cause be shown prior to Thursday May 7th, 1885, why such sale should not be made or why, the terms of sale being fully complied with, a final order of ratification of sale should not be passed on said seventh day of May, provided a copy of this order be published daily in the Evening Star, commencing April 23d, and once in the Washington Law Reporter prior to said seventh day of May.

(Signed) A B HAGNER. Asso. Justice.
A true copy. 17-2 Test: R. J. MEIGS, Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Holding a Special Term for Orphans Court Business. April 24th, 1885.

In the matter of the estate of Philip Otterback, late of the District of Columbia deceased.

Application for Letters of Administration d.b.n.c t a on the estate of the said deceased has this day been made by Henry B. Otterback, Thomas E. Young and Lewis E. Tavenner.

All persons interested are hereby notified to appear in this court on Friday, the 15th day of May next at 11 o'clock, a m., to show cause why Letters of Administration d. b. n. c t a. on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B. HAGNER, Justice.
Test 17 H. J. RAMSDELL, Register of Wills.
W. WILLOUGHBY, Solicitor

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. April 24, 1885

In the matter of the Estate of Catharine Venable, late of the District of Columbia, deceased

Application for Letter of Administration on the estate of the said deceased has this day been made by Kate C. Smith.

All persons interested are hereby notified to appear in this court on Friday the 15th day of May next at 11 o'clock, a m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B. HAGNER, Justice.
Test: 17 H J. RAMSDELL, Register of Wills.
H. R. WEBB, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. April 22d, 1885.

In the case of Rosa B. Collins and Florence M Collins (now Dowden) Executrices of John Collins, deceased, the Executrices aforesaid have, with the approval of the court, appointed Friday, the 29th day of May, A. D. 1885, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executrices will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

Test 17 H. J. RAMSDELL, Register of Wills.
HAGNER & MADDOX, Solicitors

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. April 22d, 1885.

In the case of Thomas E Waggaman, Administrator of Mary A. Auth, alias Mary A. Lawler, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 22d day of May, A. D. 1885, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 17 H J. RAMSDELL, Register of Wills.
WM. J. MILLER, Solicitor.

THIS IS TO GIVE NOTICE:

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Mary Ann Hagan, late of the District of Columbia, deceased

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of April next: they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of April, 1885.
MICHAEL J. KEANE.
HANNA & JOHNSTON, Solicitors. 16 Administrator

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business. April 22d, 1885.

In the case of Amos Webster and John B Larner, Executors of Eliza Wilson, the Executors aforesaid have, with the approval of the Court, appointed Friday, the 15th day of May, A. D 1885 at 11 o'clock a. m, for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test; 17 H J. RAMSDELL Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. April 22d, 1885.

In the case of Rosa B. Collins and Florence M. Collins (now Dowden) Executrices of Elizabeth Collins, deceased, the executrices aforesaid have, with the approval of the court, appointed Friday, the 29th day of May, A. D. 1885, at 11 o'clock a m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Executrices will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 17 H. J. RAMSDELL Register of Wills.

THIS IS TO GIVE NOTICE

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration d. b n. c t a. on the personal estate of James H. Causten, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of April next; they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 20th day of April, 1885.
THOMAS E WAGGAMAN,
IRVING WILLIAMSON, Solicitors. 17 Adm'r d.b.n.c.t a.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 22d day of April, 1885.

NELLIE F. PUMPHREY ET AL.
v.
ELIZABETH A. PUMPHREY ET AL. } No 9410. Eq. Doc. 24.

On motion of the complainants, by Mr. J. J. Darlington, their solicitor, it is ordered that the defendants, Joseph Lambert Jarboe and Ida Elizabeth Jarboe, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B HAGNER, Justice.
True copy Test: 17 R. J MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 22d day of April, 1885.

FREDERICA A PECK.
Plaintiff,
v.
GEORGE W. PECK.
Defendant. } In Equity. No 9404.

Application for divorce on the ground of desertion.

On motion of the plaintiff by Mr. T J Mackey, her solicitor, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A B. HAGNER, Justice
True copy. Test: 17 R J. MEIGS, Clerk

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Maria Christine Koch, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of April, 1885.
WERNER KOCH.
LOUIS SCHADE, Solicitor. 17 Executor.

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Legal Notices.

LOST—THIRD VOLUME COKE'S REPORTS WITH name of T. T. Crittenden on it
CRITTENDEN & MACKEY.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration on the personal estate of Albert Ray, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 13th day of April, 1885.
R. C. RAY,
H. R. ELLIOTT, Solicitor. 16 Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 13th day of April, 1885.
RACHEL T. ALLSTON
v. } No. 9394.
PHILIP C. ALLSTON.
On motion of the plaintiff, by Mr. J. Ambler Smith, her solicitor, it is ordered that the defendant, Philip C, Allston, cause his appearance to be entered herein on or before the first rule day, occurring forty days after this day; otherwise the cause will be proceeded with as in case of default,
By the Court. MAC ARTHUR, Justice.
True Copy Test: 16 R. J MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. April 17, 1885.
In the matter of the Will of Bell W. Deal, late of the District of Columbia, deceased.
Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by G H. Slaybaugh.
All persons interested are hereby notified to appear in this court on Friday the 15th day of May next at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. A. B. HAGNER, Justice.
Test: 16 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business April 17th, 1885.
In the matter of the Estate of Henrietta W. Rittenhouse, late of Washington, D. C., deceased
Application for the Probate of the last Will and Testament of the said deceased has this day been made by Benjamin F. Rittenhouse.
All persons interested are hereby notified to appear in this court on Friday the 15th day of May next at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted Probate as prayed. Poovided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. A. B. HAGNER, Justice.
Test: 16 H. J. RAMSDELL, Register of Wills.
GORDON & GORDON, Solicitors.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. April 17th, 1885.
In the matter of the Estate of Elizabeth Margaret Jones, late of the District of Columbia, deceased.
Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by George T. Jones
All persons interested are hereby notified to appear in this court on Friday, the 15th day of May, next, at 11 o'clock m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. A. B. HAGNER, Justice
Test: 16 H. J. RAMSDELL, Register of Wills.
FRED P. STANTON, Solicitor.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. April 17th, 1885.
In the matter of the Estate of Isabel Leonard, late of the District of Columbia, deceased.
Application for the Probate of the last Will and Testament of the said deceased has this day been made by James B. McCrellis, attorney for Antoinette Russell.
All persons interested are hereby notified to appear in this court on Friday, the 8th day of May next at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to Probate and record as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day
By the Court. A B. HAGNER. Justice.
Test: 16 H. J. RAMSDELL, Register of Wills.
GEO. F. GRAHAM, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business. April 17, 1885
In the case of Thomas C. Tryon, Administrator of David Tryon, alias David T. Tryon, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 15th day of May A. D 1885, at 11 o'clock, a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
Test: 16 H. J RAMSDELL, Register of Wills.
J. W. CLAMPITT, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Holding a Special Term for Orphans' Court Business. April 17, 1885.
In the case of Edwin A. McIntire, Administrator c. t. a. of David McIntire, dec'd, the Adm'r c. t a. aforesaid has, with the approval of the Court, appointed Friday the 15th day of May, A. D 1885, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Adm'r c. t. a. will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
Test 16 H. J RAMSDELL, Register of Wills.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Francis G Middleton, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 13th day of April, 1885.
IDA M. MIDDLETON,
Executrix,
16 1340 N. Y. Avenue, N. W.

THIS IS TO GIVE NOTICE.
That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Nellie Jidt, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscribers, on or before the 13th day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under our hands this 13th day of April, 1885.
HENRIETTA O. SINCLAIR,
WILLIAM W SINCLAIR,
MARY J. SINCLAIR,
his
RICHARD E. ⋈ SINCLAIR,
mark
EDWARDS & BARNARD, Solicitors. 16 Administrators.

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Legal Notices.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration c. t. a. on the personal estate of George Gregory, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of April, next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 20th day of April, 1885.
GEO R. GRAY,
O. T THOMPSON, Solicitor. 17 Administrator c t. a.

THIS IS TO GIVE NOTICE.
That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of August Doehrer, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 13th day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under our hands this 13th day of April, 1885.
HENRY LUIHEL,
HENRY KOCH,
D. W. GLASSIE, Solicitor. 17 Executors.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Catherine Hill late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 18th day of April, 1885.
JOSEPH F HODGSON
17 Executor.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Wm. B. Gove, late of Ware, New Hampshire, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 17th day of April, 1885.
WILLIAM E. ABBOTT,
HENRY M. BAKER, Solicitor. 17 Executor.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of James Read, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 20th day of April, 1885.
RICHARD ANDERSON,
E. H. THOMAS, Solicitor. 17 Adminstrator.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. April 24, 1885.
In the matter of the Estate of Rebecca Reynolds, late of the District of Columbia, deceased.
Application for the Probate of the last will and Testament and for Letters Testamentary on the estate of the said deceased, has this day been made by Rebecca Reynolds Krug and John F. Reed.
All persons interested are hereby notified to appear in this court on Friday, the 15th day of May next at 11 o'clock, a m. to show cause why the said Will should not be proved and admitted to probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. A. B. HAGNER, Justice.
Test: 17 H. J. RAMSDELL, Register of Wills.
FRANCIS P. B. SANDS, Solicitor.

Legal Notices.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Langley B. Culley, late of Baltimore, Md., deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 20th day of April, 1885.
CHARLES ALLEN,
17 Administrator.

THIS IS TO GIVE NOTICE,
That the subscriber of Fairfax County, Va., hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Mary W. Jones, late of Fairfax County, Va., deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of March next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 17th day of March, 1885.
MARK C. JONES,
H E. DAVIS, Solicitor. 17 Administrator.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Ellen J. King, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 21st day of April, 1885.
GEO W KING,
JESSE H. WILSON, Solicitor. 17 Administrator.

THIS IS TO GIVE NOTICE,
That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration on the personal estate of Mary E. King, late of the District of Columbia deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 21st day of April, 1885
GEO W KING,
JESSE H. WILSON, Solicitor. 17 Administrator.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t a. on the personal estate of Sarah J Chipman, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 17th day of April, 1885.
ANSON S. TAYLOR.
17 Administrator c. t. a.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Louisa Tenney, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24 day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 24th day of April, 1885.
ROBERT B. TENNEY.
B. P. JACKSON, Solicitor. 17 Executor.

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Washington Law Reporter

WASHINGTON - - - - - - - - May 9, 1885.
GEORGE B. CORKHILL - - - EDITOR

Myers' Federal Decisions.

We are in receipt of volumes 6 and 7 of Myers' Federal Decisions, which treat of Constitution and Laws. The contents are as follows: 1, General Principles; 2, Miscellaneous Cases on the Powers of the State and Federal Governments, (1) In General, (2) Congressional Elections, (3) Taxation, (4) Political Assessments, (5) Religious Liberty, (6) Crimes; 3, Bills of Credit; 4, Retrospective and Ex Post Facto Laws and Bills of Attainder; 5, Due Process of Law; 6, Privileges and Immunities of Citizens; 7, Equal Protection of Laws; 8, Regulation of Commerce, (1) In General, (2) On Navigable Waters, (3) Tax on Transportation of Passengers and Merchandise, (4) Regulating Charges for the Use of Private Property, (5) Discrimination against the Products of Other States, (6) Duties on Tonnage, (7) Duties on Imports and Exports, (8) Portwarden's Fees, (volume 7 continuing same subject), 9, Miscellaneous Matters under the Recent Amendments; 10, Impairing the Obligation of Contracts, (1) In General, (2) Contracts by the State, (3) State Insolvent Laws, (4) Laws Affecting Corporations, (5) Exemption from Taxation; 11, The Judiciary; (1) In General, (2) Removal of Causes to Federal Courts, (3) Trial by Jury; 12, State Constitutions; 13, Statutes and State Laws, (1) In General, (2) Enactment of Laws, (3) Approval, (4) Time of Taking Effect, (5) Construction of Statutes, (6) Repeal of Statutes, (7) State Laws and Decisions; 14, Common Law; 15, Foreign Laws; 16, Ordinance of 1787; 17, Law of Nations.

The mere setting forth of the contents of these volumes is perhaps the most satisfactory method of ascertaining their real merit, for then they speak for themselves. It cannot pass unobserved on perusing the contents how fully and methodically the subjects are treated and classified. Certainly the modest claim made by the publishers of this series that "we think we are justified in claiming that these two volumes are of more value than any work on Constitutional Law ever published," is sustained in the fullest degree by these volumes. Myers' Federal Decisions are books which are indispensable to the Bench and Bar. They are not books for a day, but for all the time and at all times. In those two volumes the great and most important subject of Constitutional Law stands forth in its profoundness and grandeur, as expounded by the most learned judges that ever graced the Bench of this country, recognized as such by all the world. There is a peculiar fascination about the subject, which, perhaps every lawyer has experienced at some time or other during his professional career, growing out of its importance, its profoundness or its inherent qualities, which call close attention to the exposition of the subject by the courts; and these expositions are what are contained in these volumes. What more need be said as to their value? What more can be said? These books must be classified with the most valuable of modern date. A careful examination will readily convince one of the truth of all which we have said in regard to them. The work is done thoroughly, correctly and conscientiously. As to printers and binders' work, it is sufficient to mention the name of the publishers—The Gilbert Book Co., St. Louis, Mo.

THE defeat of Mr. Justice Cooley in the recent election, has caused very general regret among all outside of his immediate opponents.

Judge Cooley has long been recognized as one of the ablest jurists in this country. The State of Michigan never had an abler judge upon its bench, and it should feel humiliated by his defeat. The loss falls not upon Judge Cooley but upon the State itself. The profession at large will probably reap great advantage to itself from the result of this election, for it is only reasonable to suppose that he will again turn his attention to the field of judicial literature. The value of

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his emanations needs no comment. Men of the profound wisdom and legal learning of Judge Cooley are few at the present day.

Two of the greatest lawyers of the United Kingdom—Lord Cairns, Lord Chancellor of England, and Lord O'Hagan, Lord Chancellor of Ireland—have recently died. Lord O'Hagan's reputation as a learned and faithful advocate and a wise and excellent judge is world-wide. Lord Cairns' was said to have been the greatest of living English lawyers, and one of the greatest of England's chancellors. Such losses as these fall with a heavy hand upon the legal profession of the country, and cannot be easily made good.

Supreme Court District of Columbia

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

BALTIMORE & OHIO RAILROAD COMPANY *vs.* HETZEL ET AL.*

SPECIAL TERM.

1. Where after defendants have answered, and a motion to dismiss with costs is noticed for a rule day, the complainant cannot dismiss the bill by his own order in the clerk's office before rule day, paying clerk's costs only. Such order will be vacated on motion.
2. Defendant alleged, as cause of demurrer, that the bill was not a proper bill of interpleader, and the demurrer was sustained with leave to amend. Two years afterward, no steps having meanwhile been taken by complainants, the defendant moved to dismiss for want of prosecution. *Held*, That a hearing upon this motion is a final hearing, upon granting which, a docket fee of twenty dollars will be allowed.

STATEMENT OF THE CASE.

The complainants, against whom a judgment had been recovered, filed a bill of interpleader alleging garnishment by sundry creditors of the plaintiff to the judgment. A decree *pro confesso* was obtained against the principal defendant; the other defendants answered, except one who demurred. The demurrer was to the effect that the bill was not a proper bill of interpleader, because the complainant did not offer to pay the entire sum into court, and claimed that no interest was due on the judgment. The demurrer was sustained upon a hearing with leave to complainants to amend. Two years afterwards, no steps meanwhile having been taken in the case, the defendant who demurred served a notice upon the complainants that he would move to dismiss the bill with costs at the next rule day, for the reason that the judgment together with interest had been paid, and the attaching creditors settled with.

The complainants on the Saturday before the rule day, entered an order in the clerk's office, without notice to defendant, to dismiss the bill and paid the clerk's costs. The defendant who had served the notice of motion then filed a motion to vacate the order of dismissal for irregularity, and that the court dismiss the bill with costs to the defendant, and order the clerk to tax a solicitor's fee of twenty dollars.

At the hearing:

GEORGE E. HAMILTON, for complainants, opposed the motion.

FRANK W. HACKETT, for defendant, cited, Hayford v. Griffith, 3 Blatchf., 79, and Coy v. Perkins, 13 Fed. Rep., 111.

Hagner, J., in disposing of the motion remarked substantially as follows:

This motion presents two questions. First, had the complainants a right to dismiss this suit without leave of the court or notice to the defendants; Second, is the defendant entititled to the solicitor's fee of twenty dollars.

I have no doubt that the dismissal by the complainants in the clerk's office was irregular, though it appears that nothing improper was intended. I have been referred to two recent cases where similar orders of dismissal have been set aside by the court, one by Mr. Justice Mac Arthur, the other by Mr. Justice Cox. One is the divorce proceedings of Nickerson v. Nickerson. That a complainant in a divorce suit should be allowed to

*I am indebted to Mr. Frank W. Hackett for the report of this case.

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make allegations in his bill which may be wholly unfounded, and then after a while dismiss it in the clerk's office without costs, would be very unjust and a dangerous precedent to establish. Another case cited in the argument is Westham Granite Company v. Chandler, where a person was brought into the case, and afterwards it was found out that he had no interest whatever in the litigation. The complainant had the bill dismissed as to this defendant without costs; but the court, upon motion, set aside the order of dismissal as irregular, and dismissed the bill as to this defendant, with costs allowed, including the solicitor's fee. I have no hesitation in deciding that the order of dismissal in the case at bar should be vacated.

The next question is should the solicitor's fee of twenty dollars be taxed. Section 824, Revised Statutes United States, provides that in a trial before a jury, in civil or criminal causes, or before referees, or in a final hearing in equity or admiralty, a docket fee of twenty dollars shall be taxed.

It must be a final hearing. Our practice formerly was to allow a solicitor's fee in equity of ten dollars; but we have to conform to the United States statute as this is a court of the United States (according to Page v. Burnstine, 102 U. S., 664, and other cases), and the docket fee, if any, is fixed at twenty dollars.

Is this a final hearing? Of course it is. The complainants admit that they do not wish to prosecute further, and they have done nothing since the demurrer was sustained. That demurrer went to the root of the matter, and the bill would have been dismissed at that time except that the court *ex gratia* allowed the complainants to amend. This was in effect saying, "If you wish to amend your bill and proceed, you can do so; otherwise your bill is dismissed with costs." This permission the complainants did not avail themselves of by filing an amended bill. The present motion, therefore, must be regarded as a final hearing within the meaning of the statute.

The bill will be dismissed with costs to the defendant and clerk ordered to allow a solicitor's fee of twenty dollars.

United States Supreme Court.

No. 588.—OCTOBER TERM, 1884.

THOMAS POINDEXTER, Plaintiff in Error,

vs.

SAMUEL C. GREENHOW, Treasurer of the City of Richmond, Virginia.

In Error to the Hustings Court of the City of Richmond, Virginia.

(*Continued from last week.*)

At the time of the passage of the act of March 30th, 1871, there existed a remedy by *mandamus*, in case a tax collector refused to receive the coupons, issued under that act, tendered in payment of taxes, to compel him specifically to do so. The case of Hartman v. Greenhow, 102 U. S., 672, was one in which that relief was administered; and in Antoni v. Greenhow, 107 U. S., 769, it is stated to have been the settled practice of the Supreme Court of Appeals of Virginia to entertain suits for similar relief. By an act of January 14, 1882, the General Assembly of that State modified the proceedings in *mandamus* in such cases so as to require tax payer first to pay his taxes in money, and then the coupons tendered having, in another proceeding, been determined to be geniune, he was entitled to a judgment upon the *mandamus*, requiring them to be received in payment of taxes, and the money previously paid refunded. The validity of this act became the question in Antoni v. Greenhow, *ubi supra*, and it was affirmed on the ground that, for the purpose of specifically enforcing the right to have the coupons received in payment of taxes, the new remedy was substantially equivalent to the old one. The court were not willing to decide that it was a suit against the State, in which the proceeding could be modified, or the remedy taken away altogether, at the pleasure of the State. And it affirmed the right of the coupon holder to have his coupon received for taxes when offered. "The question here, "said the court, "is not as to that right, but as to the remedy the holder has for its enforcement when denied." "The question," said the chief justice, delivering the opinion of the court, "we are now to consider is not whether, if the coupon tendered is in fact genuine and such as ought, under the contract, to be received, and the tender is kept good, the treasurer can proceed to collect the tax by distraint or such other process as the law allows, without making himself personally responsible for any trespass he may commit, but whether the act of 1882 violates any implied obligation of the

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State in respect to the remedies that may be employed for the enforcement of its contract, if the collector refuses to take the coupon."

That was a case in which it was sought, by *mandamus*, specifically to enforce the contract of the State with the coupon holder, by compelling, by affirmative action and process of law, the collector actually to receive the coupons tendered in satisfaction of taxes. It left unaffected the right of the coupon holder and tax payer, after his tender had been unlawfully refused, to stand upon his contract and the law, in defence of his rights, both of person and property, against all unlawful assaults and seizures. In the former he was an actor, seeking affirmative relief, to compel the specific performance of the contract. In the latter he is a defendant, passively resting on his rights, and resisting only demands and exactions sought to be enforced against him in denial of them. He has himself, in all things, performed the contract on his part, and obeyed the law, and simply insists, that if more is illegally exacted and taken from him, he shall have the remedy which the law gives to every other citizen, not himself in default, against the wrong-doer, who, under color of law, but without law, disturbs or dispossesses him. As we have seen, the coupon holder, whose tender of genuine coupons in payment of taxes has been refused, stands upon the same footing, in this respect, as though he had tendered gold coin in similar circumstances and with like result.

The question next in order is, whether he has any, and, if any, what remedy for the recovery of property distrained to pay the same tax which he has thus already offered and attempted to pay in money or its equivalent. It is well settled by many decisions of this court, that, for the purpose of affecting proceedings to enforce the payment of taxes, a lawful tender of payment is equivalent to actual payment, either being sufficient to deprive the collecting officer of all authority for further action, and making every subsequent step illegal and void. In Woodruff v. Trapnall, 10 How., 190, 208, it was held that a tender of the notes of the bank of the State of Arkansas, by law and a contract with the note holders made receivable in payment of public dues to the State, was equivalent to payment, in extinguishing the judgment in satisfaction of which they were offered. The court said: "The law of tender which avoids future interest and cost, has no application in this case. The right to make payment to the State in this paper arises out of a continuing contract, which is limited in time by the circulation of the notes to be received. They may be offered in payment of debts due to the State, in its own right, before or after judgment, and without regard to the cause of indebtment." In the case of United States v. Lee, 106 U. S., 196, it was held, that a certificate of a sale of land for taxes, made by commissioners, which by law was impeachable by proof that the taxes had been paid previous to sale, was rendered void by proof that the commissioners had refused to receive the taxes, without proof of an actual tender, where the commissioners had waived it by a previous notice that they would not accept it. In the opinion of the court it is said: "This court has in a series of cases established the proposition, that where the commissioners refused to receive such taxes, their action in thus preventing payment was the equivalent of payment in its effect upon the certificate of sale." Citing Bennett v. Hunter, 9 Wall., 326; Tacey v. Irwin, 18 Wall., 549; Atwood v. Weems, 99 U. S., 183; and Hills v. Exchange Bank, 105 U. S., 319.

The case, then, of the plaintiff is reduced to this. He had paid the taxes demanded of him by a lawful tender. The defendant had no authority of law thereafter to attempt to enforce other payment by seizing his property. In doing so, he ceased to be an officer of the law, and became a private wrong-doer. It is the simple case in which the defendant, a natural private person, has unlawfully, with force and arms, seized, taken and detained the personal property of another. That an action of detinue will lie in such a case, according to the law of Virginia, has not been questioned. The right of recovery would seem to be complete, unless this case can be met and overthrown on some of the grounds maintained in argument by counsel for the defendant in error. These we proceed now to examine in their order.

It is objected, in the first place, that the law and contract, by which the quality of being receivable in payment of taxes to the State is imputed to the coupons, is itself in violation of that clause of the Constitution of the United States, Art. I, sec. 10, which declares that no State shall "emit bills of credit," and is therefore void.

The coupons in question are in the ordinary form, and one of them reads as follows:

"Receivable at and after maturity for all taxes, debts and demands due the State.

"The Commonwealth of Virginia will pay the bearer thirty dollars, interest due 1st January, 1884, on bond No. 2731.

"Coupon No. 20.

"GEORGE RYE, *Treasurer*."

It is contended that this is a bill of credit

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in the sense of the Constitution, because, being receivable in payment of debts due the State, and negotiable by delivery merely, it was intended to pass from hand to hand and circulate as money.

The meaning of the term "bills of credit," as used in the Constitution, has been settled by decisions of this court. By a sound rule of interpretation, it has been construed in the light of the historical circumstances which are known to have led to the adoption of the clause prohibiting their emission by the States, and in view of the great public and private mischiefs experienced during and prior to the period of the War of Independence, in consequence of unrestrained issues, by the Colonial and State governments, of paper money, based alone upon credit. The definition thus deduced was not founded on the abstract meaning of the words, so as to include everything in the nature of an obligation to pay money, reposing on the public faith, and subject to future redemption, but was limited to those particular forms of evidences of debt, which had been so abused to the detriment of both private and public interests. Accordingly, Chief Justice Marshall, in Craig v. Missouri, 4 Pet., 410, 432, said that "bills of credit signify a paper medium intended to circulate between individuals, and between government and individuals, for the ordinary purposes of society." This definition was made more exact by merely expressing, however, its implications, in Briscoe v. The Bank of Kentucky, 11 Pet., 257, 314, where it was said: "The definition, then, which does include all classes of bills of credit, emitted by the Colonies or States, is a paper issued by the sovereign power, containing a pledge of its faith and designed to circulate as money." And again, p. 318, "To constitute a bill of credit, within the Constitution, it must be issued by a State, on the faith of the State, and be designed to circulate as money. It must be a paper which circulates on the credit of the State, and is so received and used in the ordinary business of life." The definition was repeated in Darrington v. The Bank of Alabama, 13 How., 12.

It is very plain to us that the coupons in question are not embraced within these terms. They are not bills of credit in the sense of this constitutional prohibition. They are issued by the State, it is true. They are promises to pay money. Their payment and redemption are based on the credit of the State, but they were not emitted by the State in the sense in which a government emits its treasury notes, or a bank its bank notes—a circulating medium or paper currency—as a substitute for money. And there is nothing on the face of the instruments, nor in their form or nature, nor in the terms of the law which authorized their issue, nor in the circumstances of their creation or use, as shown by the record, on which to found an inference that these coupons were designed to circulate, in the common transactions of business, as money, nor that in fact they were so used. The only feature relied on to show such a design or to prove such a use is, that they are made receivable in payment of taxes and other dues to the State. From this, it is argued, that they would obtain such a circulation from hand to hand as money, as the demand for them, based upon such a quality, would naturally give. But this falls far short of their fitness for general circulation in the community, as a representative and substitute for money, in the common transactions of business, which is necessary to bring them within the constitutional prohibition against bills of credit. The notes of the Bank of the State of Arkansas, which were the subject of controversy in Woodruff v. Trapnall, 10 How., 190, were, by law, receivable by the State in payment of all dues to it, and this circumstance was not supposed to make them bills of credit. It is true, however, that in that case it was held they were not so because they were not issued by the State and in its name, although the entire stock of the bank was owned by the State, which furnished the whole capital, and was entitled to all the profits. In this case the coupons were issued by the State of Virginia and in its name, and were obligations based on its credits, and which it had agreed, as one mode of redemption, to receive in payment of all dues to itself in the hands of any holder; but they were not issued as and for money, nor was this quality impressed upon them to fit them for use as money, or with the design to facilitate their circulation as such. It was conferred, as is apparent from all the circumstances of their creation and issue, merely as an assurance, by way of contract with the holder, of the certainty of their due redemption in the ordinary transactions between the State treasury and the tax payers. They do not become receivable in payment of taxes till they are due, and the design, we are bound to presume, was that they would be paid at maturity. This necessarily excludes the idea that they were intended for circulation at all.

It is next objected, that the suit of the plaintiff below could not be maintained, because it is substantially an action against the State of Virginia, to which it has not as-

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sented. It is said, that the tax collector, who is sued, was an officer and agent of the State, engaged in collecting its revenue, under a valid law, and that the tax he sought to collect from the plaintiff was lawfully due; that, consequently, he was guilty of no personal wrong, but acted only in an official capacity, representing the State, and, in refusing to receive the coupons tendered, simply obeyed the commands of his principal, whom he was lawfully bound to obey; and that, if any wrong has been done, it has been done by the State in refusing to perform its contract, and for that wrong the State is alone, liable but is exempted from suit by the Eleventh Article of Amendment to the Constitution of the United States, which declares that "the judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State."

This immunity from suit, secured to the States, is undoubtedly a part of the Constitution, of equal authority with every other, but no greater, and to be construed and applied in harmony with all the provisions of that instrument. That immunity, however, does not exempt the State from the operation of the Constitutional provision that no State shall pass any law impairing the obligation of contracts; for, it has long been settled that contracts between a State and an individual are as fully protected by the Constitution as contracts between two individuals. It is true, that no remedy for a breach of its contract by a State. by way of damages as compensation, or by means of process to compel its performance, is open, under the Constitution, in the courts of the United States, by a direct suit against the State itself, on the part of the injured party, being a citizen of another State, or a citizen or subject of a foreign State. But it is equally true that whenever, in a controversy between parties to a suit, of which these courts have jurisdiction, the question arises upon the validity of a law by a State impairing the obligation of its contract, the jurisdiction is not thereby ousted, but must be exercised, with whatever legal consequences, to the rights of the litigants, may be the result of the determination. The cases establishing these propositions, which have been decided by this court since the adoption of the Eleventh Amendment to the Constitution, are numerous. Fletcher v. Peck, 6 Cr., 87; New Jersey v. Wilson, 7 Cr., 164; Green v. Biddle, 8 Wh., 1, 84; Providence Bank v. Billings, 4 Pet., 514; Woodruff v. Trapnall, 10 How., 190; Wolff v. New Orleans, 103 U. S., 358; Jefferson Branch Bank v. Skelly, 1 Black, 436.

It is also true, that the question whether a suit is within the prohibition of the Eleventh Amendment is not always determined by reference to the nominal parties on the record. The provision is to be substantially applied in furtherance of its intention,, and not to be evaded by technical and trivial subtleties. Accordingly, it was held in New Hampshire v. Louisiana, and New York v. Louisiana, 108 U. S., 76, that, although the judicial power of the United States extends to "controversies between two or more States," it did not embrace a suit in which, although nominally between two States, the plaintiff State had merely permitted the use of its name for the benefit of its citizens in the prosecution of their claims, for the enforcement of which they could not sue in their own names. So, on the other hand, in Cunningham v. Macon & Brunswick Railroad Co., 109 U. S., 446, where the State of Georgia was not nominally a party on the record, it was held that, as it clearly appeared that the State was so interested in the property that final relief could not be granted without making it a party, the court was without jurisdiction.

In that case, the general question was discussed in the light of the authorities, and the cases in which the court has taken jurisdiction, when the objection has been interposed, that a State was a necessary party to enable the court to grant relief, were examined and classified. The second head of that classification is thus described: "Another class of cases is where an individual is sued in tort for some act injurious to another in regard to person or property, to which his defence is that he has acted under the orders of the government. In these cases he is not sued as or because he is the officer of the government, but as an individual, and the court is not ousted of jurisdiction because he *asserts* authority as such officer. To make out his defence he must show that his authority was sufficient in law to protect him." And, in illustration of this principle, reference was made to Mitchell v. Harmony, 13 How., 115; Bates v. Clark, 95 U. S., 204; Meigs v. McClung, 9 Cranch, 11; Wilcox v. Jackson, 13 Pet., 498; Brown v. Huger, 21 How., 315; Grisar v. McDowell, 6 Wall., 363, and United States v. Lee, 106 U. S., 196.

The *ratio decidendi* in this class of cases is very plain. A defendant sued as a wrong doer, who seeks to substitute the State in his place, or to justify by the authority of the State, or to defend on the ground that the

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State has adopted his act and exonerated him, cannot rest on the bare assertion of his defence. He is bound to establish it. The State is a political corporate body, can act only through agents, and can command only by laws. It is necessary, therefore, for such a defendant, in order to complete his defence, to produce a law of the State which constitutes his commission as its agent, and a warrant for his act. This the defendant, in the present case, undertook to do. He relied on the act of January 26, 1882, requiring him to collect taxes in gold, silver, United States Treasury notes, national bank currency, and nothing else, and thus forbidding his receipt of coupons in lieu of money. That, it is true, is a legislative act of the government of Virginia, but is not a law of the State of Virginia. The State has passed no such law, for it cannot; and what it cannot do, it certainly, in contemplation of law. has not done. The Constitution of the United States, and its own contract, both irrepealable by any act on its part, are the law of Virginia; and that law made it the duty of the defendant to receive the coupons tendered in payment of taxes, and declared every step to enforce the tax, thereafter taken, to be without warrant of law, and therefore a wrong. He stands, then, stripped of his official character, and, confessing a personal violation of the plaintiff's rights, for which he must personally answer, he is without defence.

No better illustration of this principle can be found than that which is furnished by the case of United States v. Lee, 106 U. S., 196, in which it was applied to a claim made on behalf of the National Government. The action was one in ejectment, to recover possession of lands, to which the plaintiff claimed title. The defendants were natural persons. whose defence was that they were in possession as officers of the United States under the orders of the government and for its uses. The Attorney-General called this aspect of the case to the attention of the court, but without making the United States a party defendant, It was decided by this court that to sustain the defence, and to defeat the plaintiff's cause of action, it was necessary to show that the defendants were in possession under the United States, and on their behalf, by virtue of some valid authority. As this could not be shown, the contrary clearly appearing, possession of land, actually in use as a National Cemetery, was adjudged to the plaintiffs. The decision in that case was rested largely upon the authority of Osborn v. Bank of the United States, 9 Wheat., 738, which was a suit in equity against an officer of the State of Ohio, who sought to enforce one of her statues which was in violation of rights secured to the bank by the Constitution of the United States. The defendants, Osborn and others, denied the jurisdiction of the court, upon the ground that the State was the real party in interest and could not be sued, and that a suit against her officers, who were executing her will, was in violation of the Eleventh Amendment of the Constitution. To this objection, Chief Justice Marshall replied: "If the State of Ohio could have been made a party defendant, it can scarcely be denied that this would be a strong case for an injunction. The objection is that, as the real party cannot be brought before the court, a suit cannot be sustained against the agents of that party; and cases have been cited to show that a Court of Chancery will not make a decree unless all those who are substantially interested be made parties to the suit, This is certainly true where it is in the power of the plaintiff to make them parties; but if the person who is the real principal, the person who is the true source of the mischief, by whose power and for whose advantage it is done, be himself above the law, be exempt from all judicial process, it would be subversive of the best-establised principles to say that the laws could not afford the same remedies against the agent employed in doing the wrong which they would afford against him could his principal be joined in the suit." This language, it may be observed, was quoted with approval in United States v. Lee. The principle which it enunciates constitutes the very foundation upon which the decision in that case rested.

In the discussion of such questions, the distinction between the government of a State and the State itself is important, and should be observed. In common speech and common apprehension they are usually regarded as identical; and as ordinarily the acts of the government are the acts of the State, because within the limits of its delegation of power, the government of the State is generally confounded with the State itself, and often the former is meant when the latter is mentioned. The State itself is an an ideal person, intangible, invisible, immutable. The government is an agent, and, within the sphere of the agency, a perfect representative; but outside of that, it is a lawless usurpation. The constitution of the State is the limit of the authority of its government, and both government and State are subject to the supremacy of the Constitution of the United States, and of the laws made in pursuance thereof. So that, while it is true in respect to the government of a

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State, as was said in Langford v. The United States, 101 U. S., 341, that the maxim, that the king can do no wrong, has no place in our system of government; yet, it is also true, in respect to the State itself, that whatever wrong is attempted in its name is imputable to its government, and not to the State, for, as it can speak and act only by law, whatever it does say and do must be lawful. That which, therefore, is unlawful because made so by the supreme law, the Constitution of the United States, is not the word or deed of the State, but is the mere wrong and trespass of those individual persons who falsely speak and act in its name. It was upon the ground of this important distinction that this court proceeded in the case of Texas v. White, 7 Wall., 700, when it adjudged that the acts of secession, which constituted the civil war of 1861, were the unlawful acts of usurping State governments, and not the acts of the States themselves, inasmuch as "the Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States;" and that, consequently, the war itself was not a war between the States, nor a war of the United States against States, but a war of the United States against unlawful and usurping governments, representing not the States but a rebellion against the United States. This is, in substance, what was said by Chief Justice Chase, delivering the opinion of the court in Thornington v. Smith, 8 Wall., 1, 9, when he declared, speaking of the Confederate government, that "it was regarded as simply the military representative of the insurrection against the authority of the United States." The same distinction was declared and enforced in Williams v. Bruffy, 96 U. S., 176, 192, and in Horn v. Lockhart, 17 Wall., 570, both of which were referred to and approved in Keith v. Clark, 97 U. S., 454, 465.

This distinction is essential to the idea of constitutional government. To deny it or blot it out obliterates the line of demarcation that separates constitutional government from absolutism, free self-government based on the sovereignty of the people from that despotism, whether of the one or the many, which enables the agent of the State to declare and decree that he is the State; to say "*L'Etat c'est moi.*" Of what avail are written constitution, whose bills of right for the security of individual liberty have been written, too often with the blood of martyrs shed upon the battle-field and the scaffold, if their limitations and restraints upon power may be overpassed with impunity by the very agencies created and appointed to guard, defend and enforce them; and that, too, with the sacred authority of law, not only compelling obedience, but entitled to respect? And how else can these principles of individual liberty and right be maintained, if, when violated, the judicial tribunals are forbidden to visit penalties upon individual offenders, who are the instruments of wrong, whenever they interpose the shield of the State? The doctrine is not to be tolerated. The whole frame and scheme of the political institutions of this country, State and Federal, protest against it. Their continued existence is not compatible with it. It is the doctrine of absolutism, pure, simple and naked; and of communism, which is its twin; the double progeny of the same evil birth.

It was said by Chief Justice Chase, speaking for the whole court in Lane County v. Oregon, 7 Wall., 71, 76, that the people, through the Constitution of the United States, "established a more perfect union by substituting a national government, acting, with ample power, directly upon the citizens, instead of the confederate government, which acted with powers, greatly restricted, only upon the States," In no other way can the supremacy of that Constitution be maintained. It creates a government in fact, as well as in name, because its Constitution is the supreme law of the land, "anything in the Constitution or laws of any State to the contrary notwithstanding;" and its authority is enforced by its power to regulate and govern the conduct of individuals, even where its prohibitions are laid only upon the States themselves. The mandate of the State affords no justification for the invasion of rights secured by the Constitution of the United States; otherwise, that Constitution would not be the supreme law of the land. When, therefore, an individual defendant pleads a statute of a State, which is in violation of the Constitution of the United States, as his authority for taking or holding property, to which the citizen asserts title, and for the protection or possession of which he appeals to the courts, to say that the judicial enforcement of the supreme law of the land, as between the individual parties, is to coerce the State, ignores the fundamental principles on which the Constitution rests, as contrasted with the Articles of Confederation, which it displaced; and, practically, makes the statutes of the States the supreme law of the land within their respective limits.

When, therefore, by the act of March 30th, 1871, the contract was made, by which it was agreed that the coupons issued under that act should thereafter be receivable in payment of taxes, it was the contract of the State of Vir-

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ginia, because, though made by the agency of the government, for the time being, of the State, that government was acting within the scope of its authority, and spoke with ist voice as its true representative; and inasmuch as, by the Constitution of the United States, which is also the supreme law of Virginia, that contract, when made, became thereby unchangeable and irrepairable by the State, the subsequent act of January 26th, 1885, and all other like acts, which deny the obligation of that contract and forbid its performance, are not the acts of the State of Virginia. The true and real Commonwealth which contracted the obligation is incapable in law of doing anything in derogation of it. Whatever having that effect, if operative, has been attempted or done, is the work of its government acting without authority, in violation of its fundamental law, and must be looked upon, in all courts of justice, as if it were not and never had been. The argument, therefore, which seeks to defeat the present action, for the reason that is a suit against the State of Virginia, because the nominal defendant is merely its officer and agent, acting in its behalf, in its name, and for its interest, and amenable only to it, falls to the ground, because its chief posulate fails. The State of Virginia has done none of these things with which this defence charges her. The defendant in error is not her officer, her agent, or her representative it the matter complained of, for he has acted not only without her authority, but contrary to her express commands. The plaintiff in error, in fact and in law, is representing her as he seeks to establish her law, and vindicates her integrity as he maintains his own rights.

Tried by every test which has been judicially suggested for the determination of the question, this cannot be considered to be a suit against the State. The State is not named as a party in the record; the action is not directly upon the contract; it is not for the purpose of controlling the discretion of executive officers, or administering funds actually in the public treasury, as was held to be the case in Louisiana v. Jumel, 107 U. S., 711; it is not an attempt to compel officers of the State to do the acts which constitute a performance of its contract by the State, as suggested by a minority of the court in Antoni v. Greenhow, 107 U. S., 769, 783; nor is it a case where the State is a necessary party, that the defendant may be protected from liability to it, after having answered to the present plaintiff. For, on this supposition, if the accounting officers of the State goverment refuse to credit the tax collector with coupons received by him in payment of taxes, or to seek to hold him responsible for a failure to execute the void statue, which required him to refuse coupons in payment of taxes, in any action or prosecution brought against him in the name of the State, the grounds of the judgment rendered in favor of the present plaintiff that will constitute his perfect defence. And as defence, made in any cause, though brought in a State court, would present a question arising under the Constitution and laws of the United States, it would be within the jurisdiction of this court to give it effect, upon a writ of error, without regard to the amount or value in dispute.

(*To be concluded next week.*)

New York Common Pleas - General Term.

JOHN D. W. JOY ET AL., plaintiffs and appellants, against NATHAN J. SCHLOSS ET AL., defendants and respondents.

Contracts for the delivery of goods to be manufactured are contracts for the sale of merchandise, within the Statute of Frauds, unless the goods are to be manufactured by the vendors themselves.

The doctrine laid down in Miller v. Fitzgibbons (9 Daly, 505), reaffirmed.

VAN HOESEN, J.: The learned justice who wrote the opinion of the General Term of the City Court of New York, said very correctly that, if as matter of fact, the plaintiffs had failed to show that the goods were to be manufactured by them, the statute would clearly apply to the contract, and the mistake that the General Term made was in assuming that the plaintiffs themselves were bound by the contract to manufacture the goods. There is not only no evidence to support such a finding but there is conclusive evidence to the contrary.

The plaintiffs were agents for several mills that manufactured woolen and cotton goods, the Essex Mills and the Hamilton Mills being among the number. As a dry goods commission house, the plaintiffs sell goods for manufacturers and take orders for them. In February, 1883, they got from the defendants an order for two pieces of Salisbury suitings, which they agreed to deliver in the following April and May. Nothing was said as to the place where, or the parties by whom, the goods should be made, though it was understood that they were not in existence. Any goods that corresponded to the sample, whether manufactured by a mill that the plaintiff represented or not, could lawfully have been delivered in fulfillment of the order.

There is not a word in the testimony that gives the faintest color to the assertion that the defendants expected that the plaintiffs themselves would manufacture the goods, but yet, because it appeared in the course of the

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trial that the plaintiffs were stockholders of a corporation called the Essex Mills, and its sole agents, the General Term of the City Court came to the conclusion that the contract required the plaintiffs themselves to manufacture the goods. Having reached that entirely unwarranted conclusion, the General Term then decides, in opposition to all the evidence, that the plaintiffs did actually manufacture the goods.

It is easy to imagine circumstances under which such a decision would operate most severely and unjustly upon the plaintiffs, for it is familiar law that a manufacturer is held liable upon an implied warranty against latent defects, though no such liability attaches to an ordinary commission merchant. Hoe v. Sanborn, 21 N. Y., 552.

It is perfectly clear that the General Term fell into error in assuming that the plaintiffs, owning some shares of stock of the corporation called the Essex Mills, had a bearing on the question of the applicability of the Statute of Frauds to the contract of the parties. It was proved that the plaintiffs gave the order for the Salisbury suitings to the Essex Mills, but the contract with the defendants did not require them to do so; as I have said before, the goods could have been bought anywhere if the plaintiffs had seen fit to buy them in the market, and the defendants could not have objected that they had not been manufactured in some one of the mills of which the plaintiffs were agents.

It is obvious, therefore, that this was a sale of goods rather than a contract for work and labor, and that the case falls within the class mentioned by Judge Hunt in Parsons v. Louchs (48 N. Y., 20), when he says: "The present is not one of the border cases in which an embarrassing question is presented, as where wheat is sold, but the labor of threshing remains to be done; or a sale of flour which has yet to be ground from wheat; or the sale of timber that is to be cut and corded; nor where the defendants might procure other parties to manufacture the paper." 3 Parsons on Contracts, 7th ed., star page 54.

Parsons v. Louchs was the precursor of Miller v. Fitzgibbons (9 Daly, 505), and is a support for it, if precedent were needed to sustain a sound principle.

Prayer in the Jury Room.

The Kansas Supreme Court has been called upon to decide a point probably never before raised. It seems that when the jury went out one of the number proposed to open their deliberations with prayer, and thereupon proceeded to pray "long and loud." What the tenor of the appeal was, whether it was impartial or favorable to either side, does not appear. The verdict, however, was against the defendant, whereupon his lawyer moved to set it aside on the ground of "undue influence exercised by one of the jurymen by means of public prayer in the jury room." In his elaborate brief on the point, the counsellor admits that there can be no legal objection to a "private petition to the throne of grace earnestly offered by a conscientious juror with the motive of freeing his own mind from prejudice and passion." But "a public prayer in such a place" presents a different case, since "one long practiced in the wielding of this subtle influence can play upon the feelings and judgment of his weaker brother. And the more gited in prayer is the leader the more powerful will be his influence." The court has not yet announced its opinion. In law the objection is a new one. A complaint that a juror is unduly given to prayer will also strike the public as a novelty.—*N. Y. Herald.*

YARRO M. NEESAN, the Persian who is studying for missionary service in his country, says:

There are only three newspapers in Persia. The women are uneducated. In a village of 800 inhabitants, in which I once lived, a man began to teach his wife her letters, The neighbors jeered at him on the streets, and went and reviled the woman's parents, telling them that their daughter was being made a lawyer. The nuisance became so intolerable that the parents finally had to take the wife away. They did not allow her to go back to her husband until he had signed a contract pledging himself not to interest himself any further in her intellectual development.

Ben Butler in Tears.

AN incident occurred while I was serving on the jury at Concord, when the general was quite a young lawyer, which I shall always remember. He was telling the court what he knew about English law, when he was interrupted by the venerable judge with these words, delivered in a very emphatic tone and manner: "Young man, don't you talk to me about English law. I knew all about it before you were born. You take your seat, sir." He did. It was too much for Ben's pride, and he burst into a flood of tears.—*Boston Traveller.*

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NOTES OF RECENT DECISIONS.

Fraudulent Conveyance: Who may Question Deed for Fraud, and of the Proof thereof.—Where the owner of land is fraudulently induced to convey the same to A instead of the owner's wife, A promising to hold the same in trust for the grantor's wife, on bill by her to have a trust declared and a conveyance made in her favor, where no creditor of the grantor complains, the grantee cannot defeat the relief sought on the ground that the deed was made to him to hinder, delay and defraud the grantor's creditors upon vague, uncertain and indefinite evidence. [Fishbeck v. Gross, S. C. Ill., Ottawa, Nov. 17, 1884.]

Carrier: Unendorsed Bill of Lading.—The delivery to the acceptor of a draft of an unendorsed bill of lading is sufficient to transfer the title to the property covered thereby. In such case the carrier is not liable to the shipper for the value of the goods, should the acceptor fail to pay the draft. [Jordan v. R. R. Co., Superior Ct. Ind., 31 Alb. L. J., 250.]

Removal of Cause: Moving Party cannot Object to Jurisdiction of Federal Court.—Upon the removal of a cause from a State to a Federal court, objection to the jurisdiction of the latter court cannot be raised by the party at whose instance the removal was effected. [Ayers v. Watson, S. C. U. S., Mar. 2, 1885; 5 Sup. Ct. Rep., 641.]

Husband and Wife: Indebtedness of Husband to Wife; Conveyance to Her.—When a husband is honestly indebted to his wife and other persons he may lawfully confess a judgment in her favor, the effect of which will be to secure her in preference to his other creditors. For an honest purpose, and to secure or pay a just debt due by him to his wife, he may make a valid sale or transfer of his real estate to her with like effect as to any other of his creditors. Such conveyance, however, should be carefully scrutinized and the indebtedness be clearly established. [Benson v. Maxwell, Pa., Feb. 18, 1884; 42 Leg. Int., 82.]

The Courts.

SUPREME COURT OF THE DISTRICT OF COLUMBIA

GENERAL TERM.

May 4, 1885.

Keyser v. Hitz Cost of reference to be paid out of fund in court.

Hellen v. Met. R. R. Co. On hearing.

May 6, 1885.

Carter v. Burr. Judgment below affirmed.

Cowell v Steam Dredge Co. Judgment below reversed.

McClellan v. McIntyre. Appeal dismissed.

May 7, 1885.

Mackall v. Burche. Judgment below affirmed.

Power v. Walsh. Appeal signed.

May 8, 1885.

Barnard v. Life Ins. Co. Argued.

IN EQUITY.—New Suits.

May 4, 1885.

9423. Martha L. Cattin v. Bertram E. Cattin. For divorce. Com col, J. T. Power.

9424. August Schoenborn et al. v. Mary A. Schoenborn. Discovery and relief. Com sol, W. B. Webb.

May 6, 1885.

9425. Harriet L. Davis v. Henrietta Davis et al. To sell. Com sols, Edwards & Barnard.

9426 Charles E. Creecy v. Eliza A. Drane et al. Injunction Com sol, V. B. Edwards.

9427. Mary S. Parker et al. v. Wm. H. Parker et al. To sell Com sols, Birney & Birney.

CIRCUIT COURT.—New Suits at Law.

May 5, 1885.

26132. Almon M. Clapp v. Perry H. Carson et al. Note., $150 Piffs atty, A C. Richards.

26133. Giovanni Malatesta v. Louis F. Meinkheim. Acct. $2,000. Piffs atty, G. H. Armstrong.

May 6, 1885.

26134. A. R. Blacklock & Co. v. Walter F. Noland. Judgment of Justice Mills, $60.95. Piffs atty J. W. Greer.

26135. John Carter v. Aaron Sonnenstrahl. Appeal. Defts atty, J. G. Bigelow.

26136. John W. P. Myers v. Jerome G. Sanner. Acct., $540. Piffs attys, Crittenden & Mackey.

PROBATE COURT.—Justice Hagner.

May 8, 1885.

Estate of J. W. Maury; executor granted leave to sell.

Estate of Julia T. Miller; petition of Elizabeth A. McAvoy for letters testamentary received.

Estate of A. H. Pickrell; citation issued.

Estate of Jane Kennedy; petition of Elizabeth H Duhamel for letters testamentary and order of publication.

Estate of J. V. B Bleeker; petition of Sarah B. Bleeker, widow, for letters testamentary.

Estate of Mary J. Martin; Eliza E. Charn appointed administratrix.

Estate of Julia T. Miles; will received for probate.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 1st, 1885.

In the matter of the Will of Peter Monaghan, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by Thomas Geary.

All persons interested are hereby notified to appear in this court on Friday the fifth day of June next at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: 19 H. J. RAMSDELL, Register of Wills.

JOHN E. MCNALLY, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, this 1st day of May, 1885.

JAMES B. HOUSTON v. MARY T. GARLAND ET AL. } In Equity. No. 8982.

Ordered this 1st day of May, 1885, that the offer of Dwight J. Partello, to purchase at private sale the west 24.70 feet by depth of lot seven in square one twenty-one and improvements, as reported by the trustees herein, be, and the same is, hereby accepted and the said sale is hereby ratified and confirmed unless cause to the contrary be shown on or before June 2nd, 1885. Provided a copy of this order be published once a week for three successive weeks prior to said day in the Washington Law Reporter.

The report states the amount of sales at $5,500.

By the Court. A. B. HAGNER, Justice.

True copy. Test: 18 R. J. MEIGS, Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 4th day of May, 1885.

MARTHA L. CATTIN
v. } No. 9423.
BERTRAM E. CATTIN.

Application for divorce on the ground of desertion.

On motion of the plaintiff, by Mr. J. T Power, her solicitor, it is ordered that the defendant, Bertram E. Cattin, cause his appearance to be entered herein on or before the first rule-day, occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B HAGNER, Justice.
True Copy Test: 19 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 4th day of May, 1885.

HUGH DONOHO
v. } No. 9422. Eq. Doc. 24.
JAMES BYRNES et al.

On motion of the plaintiff, by Messrs. Hannegan & Johnston, his solicitors, is it ordered that the defendants, Wilmer S. Shepherd and James Byrnes, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 19 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 6th day of May, 1885.

HENRY FETTER
v. } No. 9340. Equity.
THOMAS J. LOGAN et al.

On motion of the plaintiff, by Mr. Saville, his solicitor, it is ordered that the defendant, Frederick S. Bletz, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 19 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 9th day of May, 1885.

SARAH E. CHASE
v. } No. 9409. Equity.
DENNIS TIERNEY et al.

On motion of the plaintiff, by Mr. Duhamel, her solicitor, it is ordered that the defendant, Mathilda Kaufman, cause her appearance to be entered herein on or before the first rule day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
True copy. Test: 19 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 8, 1885.

In the matter of the Estate of Thomas I. Middleton, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Elizabeth Middleton, widow, who prays that Benjamin F. Leighton may be appointed Administrator.

All persons interested are hereby notified to appear in this court on Friday the 29th day of May next, at 11 o'clock, a. m., to show cause why Letters of Administration to said Benjamin F. Leighton, on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 19 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, the 1st day of May, 1885.

In the matter of the Estate of George Taylor, late of Washington City, District of Columbia, deceased.

The petition of Jno. StO Brookes asking that Letters of Administration on the estate of the said deceased may be granted to Julian T. Burke, of Alexandria, Va., has this day been made.

All persons interested are hereby notified to appear in this court on Friday, the 22d day of May next at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to said day.

By the Court. A B. HAGNER, Justice.
Test: 19 H. J. RAMSDELL, Register of Wills.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 8th, 1885.

In the matter of the Estate of Adolphus H. Pickrell, late of the District of Columbia, deceased.

Application for Letters de bonis non c. t. a. on the Estate of the said deceased, has this day been made by The Farmers & Mechanics' National Bank of Georgetown, D. C.

All persons interested are hereby notified to appear in this court on Friday, the 29th day of May, 1885, at 11 o'clock m., to show cause why Letters de bonis non c t a. on the estate of said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 19 H. J. RAMSDELL, Register of Wills.
CHAS. M. MATTHEWS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 1st, 1885.

In the matter of the Estate of Caleb Gardner, late of the Newport, State of Rhode Island, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration with the will annexed on the estate of the said deceased has this day been made by William F. Gardner and Cazenove G. Lee.

All persons interested are hereby notified to appear in this court on Friday the 22d day of May next at 12 o'clock, m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration with the will annexed on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 19 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 8th, 1885.

In the matter of the Estate of James Kennedy, late of the District of Columbia, deceased.

Application for Letters of Administration d b.n. on the Estate of the said deceased, has this day been made by Elizabete H. Du Hamel.

All persons interested are hereby notified to appear in this court on Friday the 29th day of May next at 11 o'clock, a. m., to show cause why Letters of Administration d b.n. on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test 19 H. J. RAMSDELL, Register of Wills.
HENKLE & DU HAMEL, Solicitors.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business. May 8th, 1885.

In the case of Margaret Sioussa, Executrix of Charles Sioussa, deceased, the Executrix aforesaid has, with the approval of the court, appointed Friday, the 5th day of June A. D. 1885, at 11 o'clock, a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executrix will take the benefit of the law against them Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 19 H. J. RAMSDELL, Register of Wills.
GEO. E. HAMILTON, Solicitor

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Holding a Special Term for Orphans' Court Business. May 4th, 1885.

In the case of Henry Polkinhorn, Administrator of H. Russel Taylor, dec'd, the Administrator aforesaid has, with the approval of the Court, appointed Friday the 29th day of May, A. D 1885, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test 19 H. J RAMSDELL, Register of Wills.
JESSE B. WILSON, Solicitor.

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Legal Notices.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Sarah C. Johnson, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 24th day of April, 1885.
REBECCA J. ADAMS,
WM H. DENNIS, Solicitor. 19 Executrix.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Wm. Whisler, late of the U. S. Army, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 8th day of May next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 8th day of May, 1885.
A. W. GREELY,
U. S. Army,
19 Signal Office.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Thomas J. Irwin, late of the District of Colnmbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 20th day of April, 1885.
SUSAN IRWIN,
JOHN E. MCNALLY, Solicitory. 19 Administratrix.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Samuel Queen, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 1st day of May next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 1st day of May, 1885.
ANN W. QUEEN,
R. P. JACKSON, Solicitor. 19 Executrix

THIS IS TO GIVE NOTICE.
That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of John Beck, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscribers on or before the 24th day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under out hands this 24th day of April, 1885.
CHRISTIAN RUPPERT,
JOHN L. VOGT,
HANNA & JOHNSTON, Solicitors. 19 Executors

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of Jenkin Thomas, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 18th day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 18th day of April, 1885.
WM. RILEY DEEBLE.
GORDON & GORDON, Solicitors. 19 Administrator c.t.a.

Legal Notices.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Anton Heitmuller, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 24th day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 24th day of April, 1885.
HENRIETTA HEITMULLR.
GEO F. APPLEBY, Solicitor. 19 Executrix.

THIS IS TO GIVE NOTICE.
That the subscriber, of Baltimore Co., Md., hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary ancillary on the personal estate of Francis Drummond, late of Baltimore County, Md., deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 5th day of May next; they may otherwise by law be excluded from all benefit of the said estate,
Given under my hand this 5th day of May, 1885.
BORGIA FANELL.
IRVING WILLIAMSON, Solicitor. 19 Executrix.

THIS IS TO GIVE NOTICE.
That the subscribers of the District of Columbia hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Patrick Cullinane, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscribers on or before the 1st day of May next; they may otherwise by law be excluded from all benefit of the said estate.
Given under our hands this 1st day of May, 1885.
E D DONNELLY,
JOHN F. CULLINANE.
HINE & THOMAS, Solicitors. 19 Executors.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of Daniel Justus O'Connor, late of the District of Columbia, deceased.
All persons having claims again the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 25th day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 25th day of April, 1885.
CHARLES C DUNCANSON.
19 C. A. WALTER, Solicitor 19 Administrator c t a.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

JOHN LANG
v. } In equity. No. 9356.
MARGARET LANG et al.

This cause came on to be heard on the report of the trustee that he had sold all that piece or parcel of land and premises mentioned in the proceedings and described as follows: Beginning at a point on the west line of the seventh street plank road, twelve perches from the intersection of said west line with Taylor's Lane road, said point being the northeast corner of J. C Lewis' lot, running thence north 89°, west, 14 05 perches; thence north 2½°, west, 8 02 perches; thence south 89°, east 14.05 perches, to the intersection with said west line of Seventh Street road; thence with said line of said road south 2½°, east 8 02 perches, to the place of beginning, together with the improvements thereon, to Andreas Loffler, for (3,650) three thousand six hundred and fifty dollars; that the said purchaser has complied with the terms of sale, and that the said sale was fair and bona fide. And on motion of counsel, whereupon it is, this fourth day of May, by the court adjudged and ordered that the said sale be, and the same is, hereby ratified unless cause be shown to the contrary on or before the 4th day of June, A D. 1885. Provided that a copy of this order be published once a week for each of three successive weeks in the Washington Law Reporter before that date
A. B. HAGNER.
A true copy. Test: 19 R. J. MEIGS, Clerk.
D. W. GLASSIE, Solicitor.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business. April 28th, 1885.

In the matter of the Estate of Caroline Burnet Hornblower, late of the City of Washington, District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by Joseph P. Bradley, of Washington, D. C.

All persons interested are hereby notified to appear in this Court on Friday, the 22d day of May next, at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B HAGNER, Justice.
Test: 18 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. April 28th, 1885.

In the matter of the Estate of Sarah Otterback, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Henry B. Otterback, who prays that Thomas E. Young and Lewis E. Tavenner may be associated with him.

All persons interested are hereby notified to appear in this court on Friday, the 22d day of May, next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B HAGNER, Justice.
Test: H. J. RAMSDELL, Register of Wills.
W. WILLOUGHBY, Solicitor. 18

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 28th of April, 1885.

MARY S. LAMBELL by MARY J RIPLEY, her next friend, Complainant, v. ROSA M. EVANS ET AL, Defendants } No. 9402. Equity.

On motion of the complainant, by Messrs. Hagner & Maddox, her solicitors, it is ordered that the defendants, Joseph O. Evans, William L. Kimmell and Alice Kimmell, his wife, Andrew J. Kimmell and Gertrude Kimmell, his wife, Frank Kimmell and Ellen Kimmell, his wife, Mary E S Kimmell Elizabeth Mann and Charles Mann, her husband, and Edward M Burchard, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default

By the Court. A B. HAGNER, Justice.
A true copy. Test: 18 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 1st day of May, 1885.

JOHN HITZ v. GERTRUDE HITZ ET AL. } No 9036. Equity.

On motion of the plaintiff, by Mr. W. B. Webb, his solicitor, it is ordered that the defendants, John C. Casparis, and Alexander L. Casparis, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
True copy. Test: 18 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Dennis Austin McCarthy, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 27th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of April, 1885.

ANNE McCARTHY,
S. S HENKLE, Solicitor. 18 Administratrix.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of John Diggan, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 24th day of March, 1885.

BENJAMIN F. RITTENHOUSE,
GORDON & GORDON, Solicitors. 18 Administrator c t a.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John Feldman, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 24th day of March, 1885.

BENJAMIN F. RITTENHOUSE,
GORDON & GORDON, Solicitors 18 Administrator

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Edward M Spedden, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of April, 1885.

I. L JOHNSON,
18 Executor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

DOUGLAS ET AL. v. WILLIAMS ET AL. } No. 8909. Eq. Doc., 23.

Irwin B. Linton, trustee herein, having reported a sale of part of lot numbered five (5) in square numbered one hundred and seventeen (117) in the city of Washington, District of Columbia, being the west sixteen (16) feet front on north L street, of said lot five (5) by the depth thereof, with the improvements and appurtenances to Charles B. Bailey, for the sum of six hundred and seventy (670) dollars.

It is, this 22d day of April, A. D. 1885, ordered that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 18th day of May, 1885. Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said day.

By the Court. A B. HAGNER, Justice.
A true copy 17-3 Test: R. J. Meigs, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

MARY LOMAX TAYLOE ET AL., Complainants, v. EUGENE PHEBE WARREN ET AL, Defendants. } Equity. No. 9269.

On consideration of the report of the trustees, George F. Appleby, William E Edmonston and William Tayloe Snyder, herein filed, recommending that authority be given them by the court to accept the bid of W L. Brown for the purchase of lots 10 and 11 in square No. 221 in Washington City, D. C., (the same being the property known as 21 Madison Place, and the residence of the late Benj. Ogle Tayloe, dec'd) at and for the sum of fifty six thousand dollars ($56,000), payable one-third cash and residue in 1, 2, 3 and 4 years with interest at 6 per centum per annum from day of sale to him until paid, it is, this twenty-second day of April, A. D 1885, ordered by the court that the trustees accept said bid and sell the said property to the said W. L. Brown for the said sum of $56,000 on terms aforesaid, unless cause be shown prior to Thursday May 7th. 1885, why such sale should not be made or why, the terms of sale being fully complied with, a final order of ratification of sale should not be passed on said seventh day of May, provided a copy of this order be published daily in the Evening Star, commencing April 23d, and once in the Washington Law Reporter prior to said seventh day of May.

(Signed) A B. HAGNER, Asso. Justice.
A true copy. 17-2 Test: R. J. MEIGS, Clerk.

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Legal Notices.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration c. t. a. on the personal estate of George Gregory, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of April, next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 20th day of April, 1885.
GEO R. GRAY,
O. T. THOMPSON, Solicitor. 17 Administrator c t. a.

THIS IS TO GIVE NOTICE.
That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of August Doehrer, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 13th day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under our hands this 13th day of April, 1885.
HENRY LUIHEL,
HENRY KOCH,
D. W. GLASSIE, Solicitor. 17 Executors.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Catherine Hill late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 18th day of April, 1885.
JOSEPH F. HODGSON
17 Executor.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Wm. B. Gove, late of Weare, New Hampshire, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 17th day of April, 1885.
WILLIAM E. ABBOTT,
HENRY M. BAKER, Solicitor. 17 Executor.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of James Read, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 20th day of April, 1885.
RICHARD ANDERSON,
E. H. THOMAS, Solicitor. 17 Adminstrator.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. April 24, 1885.
In the matter of the Estate of Rebecca Reynolds, late of the District of Columbia, deceased.
Application for the Probate of the last will and Testament and for Letters Testamentary on the estate of the said deceased, has this day been made by Rebecca Reynolds Krug and John F. Reed.
All persons interested are hereby notified to appear in this court on Friday, the 15th day of May next at 11 o'clock, a m. to show cause why the said Will should not be proved and admitted to probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. A. B. HAGNER, Justice.
Test: 17 H. J. RAMSDELL, Register of Wills.
FRANCIS P. B. SANDS, Solicitor.

Legal Notices.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Langley B. Culley, late of Baltimore, Md., deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 20th day of April, 1885.
CHARLES ALLEN,
17 Administrator.

THIS IS TO GIVE NOTICE,
That the subscriber of Fairfax County, Va., hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administratian on the personal estate of Mary W. Jones, late of Fairfax County, Va., deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of March next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 17th day of March, 1885.
MARK C. JONES,
H. E. DAVIS, Solicitor. 17 Administrator.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Ellen J. King, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 21st day of April, 1885.
GEO. W. KING,
JESSE H. WILSON, Solicitor. 17 Administrator.

THIS IS TO GIVE NOTICE,
That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration on the personal estate of Mary E. King, late of the District of Columbia deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 21st day of April, 1885.
GEO. W. KING,
JESSE H. WILSON, Solicitor. 17 Administrator.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of Sarah J Chipman, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 17th day of April, 1885.
ANSON S. TAYLOR.
17 Administrator c. t. a.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Louisa Tenney, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24 day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 24th day of April, 1885.
ROBERT B. TENNEY,
R. P. JACKSON, Solicitor. 17 Executor.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Holding a Special Term for Orphans Court Business. April 24th, 1885.

In the matter of the estate of Philip Otterback, late of the District of Columbia, deceased.

Application for Letters of Administration d.b.n.c.t.a on the estate of the said deceased has this day been made by Henry B. Otterback, Thomas E. Young and Lewis E. Tavenner.

All persons interested are hereby notified to appear in this court on Friday, the 15th day of May next at 11 o'clock, a. m., to show cause why Letters of Administration d. b. n. c. t. a. on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 17 H. J. RAMSDELL, Register of Wills.
W. WILLOUGHBY, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. April 24, 1885.

In the matter of the Estate of Catharine Venable, late of the District of Columbia, deceased

Application for Letter of Administration on the estate of the said deceased has this day been made by Kate C. Smith.

All persons interested are hereby notified to appear in this court on Friday the 15th day of May next at 11 o'clock, a m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 17 H J. RAMSDELL, Register of Wills.
H. R. WEBB, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. April 22d, 1885.

In the case of Rosa B. Collins and Florence M. Collins (now Dowden) Executrices of John Collins, deceased, the Executrices aforesaid have, with the approval of the court, appointed Friday, the 29th day of May, A. D. 1885, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executrices will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 17 H. J. RAMSDELL, Register of Wills.
HAGNER & MADDOX, Solicitors

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. April 22d, 1885.

In the case of Thomas E. Waggaman, Administrator of Mary A. Auth, alias Mary A. Lawler, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 22d day of May, A. D. 1885, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 17 H J. RAMSDELL, Register of Wills.
WM. J. MILLER, Solicitor.

THIS IS TO GIVE NOTICE:

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Mary Ann Hagan, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of April next: they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of April, 1885.

MICHAEL J. KEANE.
HANNA & JOHNSTON, Solicitors. 16 Administrator

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business. April 22d, 1885.

In the case of Amos Webster and John B Larner, Executors of Eliza Wilson, the Executors aforesaid have, with the approval of the Court, appointed Friday, the 15th day of May, A. D. 1885 at 11 o'clock a. m, for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test; 17 H. J. RAMSDELL Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. April 22d, 1885.

In the case of Rosa B. Collins and Florence M. Collins (now Dowden) Executrices of Elizabeth Collins, deceased, the executrices aforesaid have, with the approval of the court, appointed Friday, the 29th day of May, A. D. 1885, at 11 o'clock a m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Executrices will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 17 H. J. RAMSDELL, Register of Wills.

THIS IS TO GIVE NOTICE

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration d. b n. c. t. a. on the personal estate of James H. Causten, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of April, 1885.

THOMAS E. WAGGAMAN,
IRVING WILLIAMSON, Solicitors. 17 Adm'r d.b.n.c.t.a.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 22d day of April, 1885.

NELLIE F. PUMPHREY ET AL.
v.
ELIZABETH A. PUMPHREY ET AL. } No. 9410. Eq. Doc. 24.

On motion of the complainants, by Mr. J. J. Darlington, their solicitor, it is ordered that the defendants, Joseph Lambert Jarboe and Ida Elizabeth Jarboe, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
True copy. Test: 17 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 22d day of April, 1885.

FREDERICA A. PECK,
Plaintiff,
v.
GEORGE W. PECK,
Defendant. } In Equity. No 9404.

Application for divorce on the ground of desertion.

On motion of the plaintiff by Mr. T. J. Mackey, her solicitor, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice
True copy. Test: 17 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Maria Christine Koch, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of April, 1885.

WERNER KOCH.
LOUIS SCHADE, Solicitor. 17 Executor.

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Washington Law Reporter

WASHINGTON - - - - - - - - May 16, 1885.

GEORGE B. CORKHILL - - - EDITOR

Contempt of the Authority of Inferior Magistrates

Mr. Justice Blackstone said, in case of Brass Crosby, 3 Wilson 188: "The sole adjudication of contempt and the punishment thereof, belongs exclusively and without interfering to each respective court. Infinite confusion and disorder would follow if courts could, by writs of habeas corpus, examine and determine the contempts of others."

The principle here stated, in its application to superior courts, is illustrated and applied in numerous reported cases, both State and Federal, and the disposition of courts has been to hold to it without any relaxation. But its authority, when applied to courts of inferior jurisdiction to magistrates and other persons vested with special and limited judicial powers, seems not to be so well settled.

In the case of justices of the peace, their powers over witnesses and other persons coming before them, are, for the most part, specially conferred and limited by statute. And yet numerous decisions are found to the effect that from the necessity of the case, justices of the peace, in the absence of statutory provisions, are vested with all needful authority to maintain order and enforce obedience to reasonable requirements while holding court; and, if need be, to impose fines or commit for contempts. Hill v. Crandall,, 52 Ill., 70; Burnham v. Stevens, 33 N. H., 247; Robb v. McDonald, 29 Iowa, 330.

United States Commissioners (or as they are designated in the statutes "Commissioners of Circuit Courts of the United States"), were vested with certain criminal jurisdiction by the first section of the act of Congress of August 23, 1842, which provided that they should "exercise all the powers that any justice of the peace, or other magistrates of the United States, may now exercise in respect to offenders for any crime or offence against the United States, by arresting, imprisoning or bailing the same, under and by virtue of the 33d section of the act of September 24, 1789."

In U. S. v. Rundlett, 2 Curtis, 41, and again in U. S. v. Horton's Sureties, 2 Dillon, 94, and in U. S. v. Case, 8th Blatchf. C. C., 251, as well as in numerous other reported cases, the powers of U. S. Commissioners in criminal cases before him are measured by the powers conferred upon justices of the peace by the statutes of the particular State in which the commissioner acts. For example, in U. S. v. Horton's Sureties, *supra*, it was decided that a U. S. Commissioner sitting in Missouri could not adjourn the examination of a prisoner before him for the period of nineteen days, because, by the statutes of that State, a justice of the peace could not adjourn a criminal examination before him for a period exceeding ten days. And in U. S. v. Case, *supra*, it was held that a commissioner in New York could not take a recognizance for the appearance of a prisoner from day to day before him pending his examination, but must commit him, because the justices of the peace of that State had no such authority.

On the contrary, in Potter v. Kingsbury, 4th Day (Conn) 98, the court affirmed the power of justices of the peace to adjourn the hearing, and admit to bail from day to day pending an examination, referring for the power solely to the Connecticut statute.

The principle may be said to be well established that where, by the local law, a justice of the peace or similar State magistrate has power to attach a disobedient witness and punish him for contempt, a commissioner has like authority. U. S. v. Schuman, 2 Abb. C C., 41. In re Thompson, Krekel, J., Western district of Missouri. This rule, however, is subject to the exception of such cases as are otherwise expressly provided for in the U. S. Statutes. For example, section 868 of the Revised Statutes, U. S., provides that in depositions taken under a *dedimus potestatem*, if a witness refuses to appear, or, appearing, refuses to testify, not being privileged from giving testimony, and such refusal or neglect is proven to the satisfaction of any judge of the court whose clerk issues such subpœna, such judge may proceed to enforce obedience

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to the process or punish the disobedience, etc.

Notaries Public Taking Depositions.

The Act of Congress of August 15, 1876, provides that "notaries public of the several States and territories and of the District of Columbia are hereby authorized to take depositions, and to do all other acts in relation to taking testimony used in the courts of the United States, take acknowledgments and affidavits in the same manner, and with the same effect as commissioners of the United States Circuit Courts may lawfully take and do."

In many of the States, as for example, Missouri, where similar powers are conferred upon notaries by the State law, express powers are given all officers taking depositions to compel the attendance of witnesses, and to punish them for refusal to testify. But no such express powers are conferred by the statutes of the United States upon notaries. How, then, shall they compel the attendance and giving of testimony by contumacious witnesses? Either this coercive authority follows as a necessary attendant upon the power conferred by the statute upon notaries, or it does not exist, and, as a consequence, they would frequently find it impossible to perform their official duties.

The code of the State of Kansas authorizes notaries to take depositions to be used in evidence in courts, but it is silent as to conferring any authority to compel witnesses either to attend or to testify in obedience to his subpœna. In Abel's Case, 12 Kansas, 451, a witness refusing to testify was committed to the sheriff as keeper of the common jail for his contempt, and he applied to the court for a writ of habeas corpus upon the alleged ground of the want of authority of the notary to punish for contempt. The court refused to release him, deciding that his committal was legal.

Proffatt, in his work upon notaries public, in commenting on this case, says: "It cannot be denied that officers who have power to issue a subpœna for witnesses to give their depositions before them, must have, irrespective of any statutory express power, a right to enforce obedience to their subpœna, otherwise their official duties could not be properly discharged."

On the other hand, Rapalje, in a very recent work on "Contempts," says, p. 10: "A notary public has no power, either at common law or by statute when taking a deposition, to punish the witness as for contempt for contumacious refusal to answer proper questions; and where the witness is committed to jail for such refusal, an action for false imprisonment will lie against the notary, and the person so committed will be discharged on habeas corpus." Citing Burt v. Pyle, 89 Ind., 398, and Ex parte Kreiger, 7 Mo. App., 367.

United States Supreme Court.

No. 588.—October Term, 1884.

Thomas Poindexter, Plaintiff in Error,

vs.

Samuel C. Greenhow, Treasurer of the City of Richmond, Virginia.

In Error to the Hustings Court of the City of Richmond, Virginia.

(Continued from last week.)

In the case of Osborn v. The Bank of the United States, 9 Wheat., 738, 853, Chief Justice Marshall put, by way of argument and illustration, the very case we are now considering. He said: "Controversies respecting boundary have lately existed between Virginia and Tennessee, between Kentucky and Tennessee, and now exist between New York and New Jersey. Suppose, while such a controversy is pending, the collecting officer of one State should seize property for taxes belonging to a man who supposes himself to reside in the other State, and who seeks redress in the Federal court of that State in which the officer resides. The interest of the State is obvious. Yet it is admitted, that in such a case the action would lie, because the officer might be treated as a trespasser, and the verdict and judgment against him would not act directly on the property of the State. That it would not so act, may, perhaps, depend on circumstances. The officer may retain the amount of the taxes in his hands, and, on the proceedings of the State against him, may plead in bar the judgment of a court of competent jurisdiction. If this plea ought to be sustained, and it is far from being certain that it ought not, the judgment so

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pleaded would have acted directly on the revenue of the State in the hands of its officers. And yet the argument admits that the action, in such a case, would be sustained. But suppose, in such a case, the party conceiving himself to be injured, instead of bringing an action sounding in damages, should sue for the specific thing, while yet in possession of the seizing officer, It being admitted, in argument, that the action sounding in damages would lie, we are unable to perceive the line of distinction between that and the action of detinue. Yet the latter action would claim the specific article seized for the tax, and would obtain it, should the seizure be deemed unlawful."

Although the plaintiff below was nominally the actor, the action itself is purely defencive. Its object is merely to resist an attempted wrong and to restore the *status in quo* as it was when the right to be vindicated was invaded. In this respect, it is upon the same footing with the preventive remedy of injunction in equity, when that jurisdiction is invoked, and of which a conspicuous example, constantly followed in the courts of the United States, was the case of Osborn v. The Bank of the United States, *ubi supra*. In that case the taxing power of the State was resisted on the ground that its exercise threatened to deprive the complainant of a right conferred by the Constitution of the United States. The jurisdiction has been constantly exerted by the courts of the United States to prevent the illegal taxation of national banks by the officers of the States; and in Cummings v. National Bank, 101 U. S., 153, 157, it was laid down as a general principle of equity jurisdiction, "that when a rule or system of valuation is adopted by those whose duty it is to make the assessment, which is designed to operate unequally and to violate a fundamental principle of the Constitution, and when this rule is applied not solely to one individual, but to a large class of individuals, or corporations, equity may properly interfere to restrain the operation of this unconstitutional exercise of power."

And it is no objection to the remedy in such cases, that the statute whose application in the particular case is sought to be restrained is not void on its face, but is complained of only because its operation in the particular instance works a violation of a constitutional right; for the cases are numerous, where the tax laws of a State, which, in their general and proper application are perfectly valid, have been held to become void in particular cases, either as unconstitutional regulations of commerce, or as violations of contracts prohibited by the Constitution, or because in some other way they operate to deprive the party complaining of a right secured to him by the Constitution of the United States. At the present term of this court, at least three cases have been decided, in which railroad companies have been complainants in equity, seeking to restrain officers of States from collecting taxes, on the ground of an exemption by contract, and no question of jurisdiction has been raised. The practice has become common, and is well settled on incontestable principles of equity procedure. Memphis Railroad v. Railroad Commissioners, 112 U. S., 609; St. Louis, &c., Ry. Co. v. Berry, 113 U. S., 465; Chesapeake & Ohio R. R. Co. v. Miller, 114 U. S.

It is still urged upon us, however, in argument, that, notwithstanding all that has been or can be said, it still remains that the controversy disclosed by the record is between an individual and the State; that the State alone has any real interest in its determination; that the practical effect of such determination is to control the action of the State in the regular and orderly administration of its public affairs; and that, therefore, the suit is and must be regarded as a suit against the State, within the prohibition of the Eleventh Amendment to the Constitution. Omitting, for the time being, the consideration already enforced, of the fallacy that lies at the bottom of this objection, arising from the distinction to be kept in view between the government of a State and the State itself, the premises which it assumes may all be admitted, but the conclusion would not follow. The same argument was employed in the name of the United States in the Lee Case, and did not prevail. It was pressed with the greatest force of which it was susceptible in the case of Osborn v. The Bank of the United States, and was met and overcome by the masterly reasoning of Chief Justice Marshall. It appeared early in the history of this court, in 1799, in the case of Fowler v. Lindsey, 3 Dall., 411, in which that able magistrate, Mr. Justice Washington, pronounced his first reported opinion. On a motion to remove the cause by *certiorari* from the circuit court, on the ground that it was a suit in which a State was a party, it being an ejectment for lands, the title to which was claimed under grants from different States, he said: "A case which belongs to the jurisdiction of the Supreme Court, on account of the interest that a State has in the controversy, must be a case in which a State is either nominally or sub stantially the party. It is not sufficient that a State may be consequentially affected; for

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in such case (as where the grants of different States are brought into litigation) the circuit court has clearly a jurisdiction. And this remark furnishes an answer to the suggestions that have been founded on the remote interest of the State, in making retribution to her grantees, upon the event of an eviction."

The thing prohibited by the Eleventh Amendment is the exercise of jurisdiction in a "suit in law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State." Nothing else is touched; and suits between individuals, unless the State is the party, in a substantial sense, are left untouched, no matter how much their determination may incidentally and consequentially affect the interests of a State, or the operations of its government. The fancied inconvenience of an interference with the collection of its taxes by the government of Virginia, by suits against its tax collectors, vanishes at once upon the suggestion that such interference is not possible, except when that government seeks to enforce the collection of its taxes contrary to the law and contract of the State, and in violation of the Constitution of the United States. The immunity from suit by the State now invoked, vainly, to protect the individual wrong doers, finds no warrant in the Eleventh Amendment to the Constitution, and is, in fact, a protest against the enforcement of that other provision which forbids any State from passing laws impairing the obligation of contracts. To accomplish that result requires a new amendment, which would not forbid any State from passing laws impairing the obligation of its own contracts.

What we are asked to do is, in effect, to overrule the doctrine in Fletcher v. Peck, 6 Cranch, 87, and hold that a State is not under a constitutional obligation to perform its contracts, for it is equivalent to that to say that it is not subject to the consequences when that constitutional prohibition is applied to suits between individuals. We could not stop there. We should be required to go still further, and reverse the doctrine on which that constitutional provision rests, stated by Chief Justice Marshall in that case, when he said: "When, then, a law is in its nature a contract. when absolute rights have vested under that contract, a repeal of the law cannot divest those rights; and the act of annulling them, if legitimate, is rendered so by a power applicable to the case of every individual in the community. It may well be doubted whether the nature of society and of government does not prescribe some limits to the legislative power; and, if any be prescribed, where are they to be found if the property of an individual, fairly and honestly acquired, may be seized without compensation? To the legislature all legislative power is granted; but the question, whether the act of transferring the property of an individual to the public be in the nature of legislative power, is well worthy of serious reflection." And, in view of such a contention, we may well add the impressive and weighty words of the same illustrious man, when he said, in Marbury v. Madison, 1 Cranch, 137: "The government of the United States has been emphatically termed a government of laws and not of men. It will certainly cease to deserve this high appellation if the laws furnish no remedy for the violation of a vested legal right."

It is contended, however, in behalf of the defendant in error, that the act of January 26th, 1882, under which he justified his refusal of the tender of coupons, does not impair the obligation of the contract between a coupon holder and the State of Virginia, inasmuch as it secures to him a remedy equal in legal value to all that it takes away, and that consequently, as the State may lawfully legislate by changing remedies so that it does not destroy rights, the remedy thus provided is exclusive, and must defeat the plaintiff's action.

The remedy thus substituted and declared exclusive is one that requires the tax payer demanding to have coupons received in payment of taxes, first, to pay the taxes due from him in money, under protest, when, within thirty days thereafter, he may sue the officer to recover back the amount paid, which, on obtaining judgment therefor, shall be refunded by the auditor of public accounts out of the treasury. By the amendment passed March 13, 1884, the coupons tendered are required to be sealed up and marked for identification, filed with the petition at the commencement of the suit, produced on the trial as evidence of the tender, and delivered to the auditor of public accounts to be cancelled when he issues his warrant for the amount of the judgment.

It is contended that, in view of this remedy the case is ruled by the decision of this court in Antoni v. Greenhow, 107 U. S., 769. We have, however, already shown, by extracts from the opinion of the court in that case, that the question involved in the present proceeding was not covered by that judgment. In that case the plaintiff in error was seeking to compel the officer specifically to receive his coupons in payment of taxes by mandamus, on the ground that he was entitled to that remedy when the contract was made by the

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law of March 30, 1871. The law giving that remedy was subsequently amended, requiring the petitioner to pay the taxes in money in the first instance, and permitting the writ to issue only after a trial, in which the genuineness of the coupons tendered had been established. The court held that he might have been put to the same proof in the former mode of proceeding, and that the amendment did not destroy the efficiency of the remedy.

But here the plaintiff did not seek any compulsory process against the officer to require him specifically to receive the coupons tendered. He offered them and they were refused. He chose to stand upon the defensive and maintain his rights as they might be assailed. His right was to have his coupon received for taxes when offered. That was the contract. To refuse to receive them was an open breach of its obligation. It is no remedy for this that he may acquiesce in the wrong, pay his taxes in money which he was entitled to pay in coupons, and bring suit to recover it back. His tender, as we have already seen, was equivalent to payment, so far as concerns the legality of all subsequent steps by the collector to enforce payment by distraint of his property. He has the right to say he will not pay the amount a second time, even for the privilege of recovering it back. And if he chooses to stand upon a lawful payment once made, he asks no remedy to recover back taxes illegally collected, but may resist the exaction, and treat as a wrongdoer the officer who seizes his property to enforce it.

It is suggested that the right to have coupons received in payment of taxes is a mere right of set-off, and is itself but a remedy, subject to the control of legislation. Ordinarily, it is true, the right to set off mutual independent debts, by way of compensation and satisfaction, is dependent on the general law, does not enter into the contract, although it may be the *lex loci contractus*, and is dependent for its enforcement upon the *lex fori*, when suit is brought, and consequently may be changed by the legisture, without impairing vested rights. But in such cases the right is entirely dependent upon the general law, and changes with it. It is different, when, as in many cases of equitable set-off, it inheres in the transaction or arises out of the relations of the parties; and it may in any case, as it was in this, be made the subject of contract between parties. When this is done, it stands upon the footing of every other lawful contract, upon valuable consideration, the obligation of which cannot be impaired by subsequent legislation.

It is urged upon us, however, that in a revenue system, a provision of law which gives to a party complaining of an illegal exaction of taxes, the right to recover back the amount in dispute only after previous payment under protest, as the sole remedy, against either the officer or the government, is a just and reasonable rule, sufficiently securing private rights, and convenient, if not necessary, to the interests of the public. We are referred to the revenue laws of the United States for illustration and example, and the question is put, why a similar provision, as it is assumed to be, should not be considered adequate as a remedy for the holders of coupons in Virginia, who have been denied the right to use them in payment of taxes.

The answer is obvious and complete. Virginia, by a contract which the Constitution of the United States disables her from impairing, has bound herself that it shall be otherwise. The State has agreed that the coupons cut from her bonds shall be received in payment of taxes due to her, as though they were money. When the tax payer has tendered such coupons, he has complied with the agreement, and in legal contemplation has paid the debt he owed the State. So far as that tax is concerned, and every step taken for enforcing its payment in disregard of that tender, the coupon holder is withdrawn from the power and jurisdiction of the State. He is free from all further disturbance, and is securely shielded by the Constitution in his immunity. No proceeding, whatever its pretext, which does not respect this right, can be judicially upheld. The question is not of the reasonableness of a remendy for a breach of the contract to receive the tendered coupons in payment of the tax; it is whether the right to have them so received, and the use of that right as a defence against all further efforts to exact and compel payment of the tax, in denial and defiance of that right, can be taken away without a violation of that provision of the Constitution which prohibits the States from passing laws which impair the obligation of contracts. Certainly, a law which takes from the party his whole contract, and all the rights which it was intended to confer, must be regarded as a law impairing its obligation.

Another point remains for consideration. Sec. 721, R. S., provides that "the laws of the several States, except where the Constitution, treaties or statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at common law, in the courts of the United States, in cases where they apply;" and Sec. 914, R. S., declares that "the practice, pleadings and forms and modes of proceeding in civil causes, other

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than equity and admiralty causes, in the Circuit and District Courts, shall conform, as near as may be, to the practice, pleadings and forms and modes of proceeding existing at the time in like causes in the courts of record of the State within which such Circuit or District Courts are held, any rule of court to the contrary notwithstanding." Upon these sections it is argued that, admitting the acts of the General Assembly of Virginia of January 26th, 1882, and the amendment by the act of March 13th, 1884, to be unconstitutional and void, so far as they forbid tax collectors from receiving coupons in payment of taxes, nevertheless, as the State has control over the forms of action and modes of proceeding by way of remedy, and has forbidden, in cases where the tax collector has refused coupons in payment of taxes, any personal action against him other than the suit to recover back the tax demanded and paid under protest, the same law, by force of the Revised Statutes of the United States, must govern in the Courts of the United States.

It is not entirely clear, on the face of the act of January 26, 1882, that it does forbid actions against the officer for illegally levying upon the property of the coupon holder for the tax which he has offered to pay. The language of the act seems to embrace only such suits as are framed with the direct object of preventing or restraining him from taking steps to collect the tax. And this uncertainty is not made clear by the amendatory act of March 13, 1884, which, by expressly forbidding actions of trespass, or trespass on the case to be brought or maintained against any collecting officer for levying upon the the property of any tax payer who may have tendered coupons in the payment of the tax demanded, would seem to have left the action of detinue, which was authorized in such cases by the previously existing law of Virginia, untouched by the prohibition.

We shall assume, however, for the purposes of this opinion, that these acts of the General Assembly of Virginia were intended to and do forbid every action, of whatever kind, against the collecting officer, for the recovery of specific property taken by distraint, or of damages for its caption or detention, and leaves to the coupon holder, as his sole right of action, the suit to recover back the money illegally collected from him.

The action, as we have already seen, is no remedy whatever for the loss of the specific right of paying his taxes with coupons. It does not even profess so to be. Neither is it a remedy for the loss of the right sought to be vindicated in this and other personal actions against the collector for unlawfully taking from the plaintiff his property. And, upon the supposition made, this wrong is without remedy by any law of Virginia.

The direct result, then, of giving effect to these provisions of the act in question is to defeat entirely the right of the coupon holder to pay his taxes with his coupons, which we have already said avoids that part of the acts in question which forbids it in terms, and to take from him that right as a defence against the wrongs and trespasses committed upon him and his property in denial and defiance of it. All persons, whose property is unlawfully taken, otherwise than to enforce payment of taxes, are secured in their right of action for redress. But the coupon holder, to whom the Constitution of the United States guarantees the right, conferred upon him by the law and contract of Virginia, to pay his taxes in coupons, is excepted. The discrimination is made against him in order to deprive him of that right, and, if permitted, will have the effect of denying to him all redress for a deprivation of a right secured to him by the Constitution. To take away all remedy for the enforcement of a right is to take away the right itself. But that is not within the power of the State.

Sec. 721, R. S., it will be observed, makes an express exception, in reference to the adoption of State laws as rules of decision, of cases where the Constitution otherwise requires, which it does wherever the adoption of the State law deprives a complaining party of a remedy essential to the vindication of a right, and that right is derived from or protected by the Constitution of the United States. The same exception is implied in Sec. 914, the language of which, indeed, is not imperative, as the conformity required in the practice and procedure of the courts of the United States with that of the State courts needs only to be "as near as may be." No one would contend that a law of a State, forbidding all redress by actions at law for injuries to property, would be upheld in the courts of the United States, for that would be to deprive one of his property without due process of law. This is exactly what the statutes in question undertake to do, in respect to that class of persons whose property is taken from them for the offence of asserting, under the protection of the Constitution, the right to pay their taxes in coupons. The contract with Virginia was not only that the coupons should be received in payment of taxes, but, by necessary implication, that the tax payer making such a tender should not be molested further, as though he were a de-

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linquent, and that for every illegal attempt subsequently to enforce the collection of the tax, by the seizure of property, he should have the remedies of the law in force when the contract was made, for redress, or others equally effective. "The obligation of a contract," said this court, in McCracken v. Hayward, 2 How., 608, 612, "consists in its binding force on the party who makes it. This depends on the laws in existence when it is made. These are necessarily referred to in all contracts, and forming a part of them, as the measure of the obligation to perform them by the one party and the right acquired by the other. There can be no other standard by which to ascertain the extent of either than that which the terms of the contract indicate, according to their settled legal meaning; when it becomes consummated, the law defines the duty and the right, compels one party to perform the thing contracted for, and gives the other a right to enforce the performance by the remedies then in force. If any subsequent law affect to diminish the duty or to impair the right, it necessarily bears on the obligation of the contract, in favor of one party to the injury of the other; hence, any law which in its operation amounts to a denial or obstruction of the rights accruing by a contract, though professing to act only on the remedy, is directly obnoxious to the prohibition of the Constitution."

The acts of assembly in question must be taken together, as one is but an amendment to the other. The scheme of the whole is indivisible. It cannot be separated into parts. It must stand or fall together. The substantive part of it, which forbids the tax collector to receive the coupons in payment of taxes, as we have already declared, as, indeed, on all sides is admitted, cannot stand, because it is not consistent with the Constitution. That which is merely auxiliary to the main design must also fall with the principal of which it is merely an incident; and it follows that the acts in question are not laws of Virginia, and are therefore not within the sections of the Revised Statutes referred to, nor obligatory upon the courts of the United States.

It is undoubtedly true that there may be cases where one part of a statute may be enforced as constitutional, and another be declared inoperative and void, because unconstitutional; but these are cases where the parts are so distinctly separable that each can stane alone, and where the court is able to see, and to declare, that the intention of the Legislature was that the part pronounced valid should be enforceable, even though the other part should fail. To hold otherwise would be to substitute for the law intended by the Legislature one they may never have been willing by itself to enact. An illustration of this principle is found in the Trade-Mark Cases, 100 U. S., 82, where an act of Congress, which, it was claimed, would have been valid as a regulation of commerce with foreign nations and among the States, was held to be void altogether, because it embraced all commerce, including that between citizens of the same State, which was not within the jurisdiction of Congress, and its language could not be restrained to that which was subject to the control of Congress. "If we should," said the court in that case, p. 99, "in the case before us undertake to make, by judicial construction, a law which Congress did not make, it is quite probable we should do what, if the matter were now before that body, it would be unwilling to do."

Indeed it is quite manifest, from the face of the laws themselves, that they are together but parts of a larger whole. By an act of the General Assembly of Virginia, passed February 14, 1882, the Legislature re-stated the account between the State and its creditors on a basis of readjustment which reduced it to the sum of $21,035,377.15, including interest in arrears to July 1st, 1882, which was thereby declared to be her equitable share of the debt of the old and entire State, and on which it was also declared that the State was not able to pay interest for the future at a larger rate than three per cent. per annum. The outstanding debt, of which this was a reduction, was then classified, and bonds of the State were authorized to be issued, bearing interest at the rate of three per cent. per annum, in exchange for outstanding bonds of the different classes, scaled at rates of fifty-three per cent., sixty per cent., sixty-nine per cent., sixty-three per cent., and, as to one class, as high as eighty per cent., which were to be retired and cancelled. The coupons on the new bonds were not made receivable in payment of taxes. To coerce creditors holding bonds issued under the act of March 30, 1871, to exchange them for these new bonds, at these reduced rates, and with them to give up their security for the payment of interest, arising out of the receivability of coupons in payment of taxes, is the purpose of the acts of January 26th, 1882, and of March 13th, 1884, and all together form a single scheme, the undisguised object of which is to enable the State to rid itself of a considerate portion of its public debt, and to place the remainder on terms to suit its own convenience, without regard to the obligation it owes to its creditors.

The whole legislation, in all its parts, as to

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creditors affected by it and not consenting to it, must be pronouced null and void. Such is the sentence of the Constitution itself, the fundamedtal and supreme law for Virginia, as for all the States and for all the people, both of the States separately and of the United States, and which speaks with sovereign and commanding voice, expecting and receiving ready and cheerful obedience, not so much for the display of its power, as on account of the majesty of its authority and the justice of its mandates.

The judgment of the Hustings Court of the City of Richmond is accordingly reversed, and the cause will be remanded, with directions to render judgment upon the agreed statement of facts in favor of the plaintiff;

And it is so ordered.

Washburne's Appeal Supreme Court Penn.

A bill in equity will not lie to enjoin against the use of an alley before the legal title to the alley has been established by common law proceedings.

Appeal of Nicholas Washburne and Maria Washburne, his wife, in the right of said Maria Washburne, from the decree of the Court of Common Pleas of Lackawanna county.

Opinion by CLARK, J.—The only question raised upon this record is, whether or not a case within equity jurisdiction is therein presented. The bill sets forth that the complainants are the owners in fee simple of certain real property in the city of Scranton, extending from Main street on the south to Hyde Park avenue on the north, known as the Calvin Washburne lot, upon the western side of which is an alley, sixteen feet wide, leading from Main street into and over the said property; that the respondents own and occupy the property adjoining on the west, known as the Nicholas Washburne lot; that the respondents have, without any right, passed and repassed over this alley, and threaten to do so at their pleasure. The bill further charges that the respondents claim and threaten to enter upon and possess a small part of the Calvin Washburne lot, a narrow strip along the western side, including a portion of the complainant's buildings erected thereon; that the complainants are and have been in full possession of the alley, and also of the disputed strip of ground, and that the respondents have neither right nor title to either. Wherefore, to prevent a multiplicity of actions at law for the redress of those repeated and threatened wrongs and trespass, the prayer of the bill is for a perpetual injunction to restrain the respondents from using the alley and from taking possession of the said strip of ground.

A demurrer to the bill was overruled and an answer was filed, in which the respondents claim the right to use the alley, denying any wrongful act, and allege that their claim is based on a just and legal title; that they are justly and legally entitled to the strip of land referred to in the bill, and deny that the complainants are or have been in the possession of the disputed premises.

In the proofs the parties conformed to the pleadings, and proceeded as if the action was at law, in ejectment or trespass; the whole contention, as shown by both the pleadings and the proofs, was upon the legal rights and claims of the parties; no irreparable injury was shown; no clear right to the subjects in dispute established; no ground for equitable relief disclosed. Where rights which are legal are asserted on one side and denied on the other, the remedies are at law; they cannot be settled under equity forms; this is undoubtedly the general rule. In actions respecting real property, therefore, if there be no equitable ground of relief involved, the rights of the parties must be determined at law; when thus determined, or when they are admitted in the pleadings, or otherwise clearly appear, an equity based upon that right, superinduced by the acts of the parties, may be asserted, and a decree for equitable relief made; thus equity is made the means, not of establishing the legal right, but of giving adequate protection in the enjoyment of it when thus established. No irreparable injury has been shown, and it does not yet appear that a multiplicity of suits must result under proceedings at law; all parties in interest may be put upon the record in a single suit, and *non constat*, that the trial and determination of that suit may not end the controversy; the right to equitable relief may follow, if any equity is superinduced by the acts of the parties; but the interference of equity in such a case rests, as stated by Chancellor Kent, in Gardner v. The Village of Newbury, 2 Johns. Ch. Rep., 164, "on the principle of a clear and certain right to the enjoyment of the subject in question, and an injurious interruption of that right which, upon just and equitable grounds, ought to be prevented."

To the same effect are the cases of North Penn. Coal Co. v. Snowden, 6 Wright, 488; Norris' Appeal, 64 Pa. St., 275; Tilmes v. March, 67 Id., 507; Haines' Appeal, 73 Id., 169, and Grubb's Appeal, 90 Id., 228. In Rhea v. Forsythe, 1 Wright, 503, Mr. Justice Woodward, after a review of the cases, con-

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cludes as follows: "From these and many more authorities which might be cited to the same effect, it is apparent that where the plaintiff's right has not been established at law, or is not clear, but is questioned on every ground on which he puts it, not only by the answer of the defendant, but by proof in the cause, he is not entitled to remedy by injunction. It is not enough that he is able to produce some evidence of his right when there is conflicting evidence that goes to the denial of his rights. When the emergency is pressing, and the injunction affidavits disclose a *prima facie* right in the plaintiff, the proper practice, I apprehend, is for the court to interfere by special injunction and stay the defendant's hand until the right has been tried at law." Even in cases confesedly within the jurisdiction, as partition, equity will not interfere if the complainant's title be denied until he has vindicated it at law; the court may retain the bill, however, until that has been done. 2 Atk., 280; Coxe v. Smith, 4 Johns. Chan. Rep., 271; North Penn. Coal Co. v. Snowden, *supra*. A further citation of authorities upon a point so well settled is certainly unnecessary.

The cases sighted by the appellee are not in principle inconsistent with the cases here referred to. In none of them did the dispute involve the ascertainment and determination between the contending parties of their rights at law; the right of the complainant, in each of the cases, was either admitted or otherwise clearly and incontestably established, and in all of them proper grounds were assigned for equitable relief. A careful study of all the cases will disclose no great conflict between them; the same general doctrine is deducible from all. In the case before us a large number of witnesses was called and voluminous testimony was taken on both sides touching the issue raised by the bill and answer. The testimony taken in behalf of the plaintiff was to the effect that he had purchased and was the owner in fee of the premises in dispute; the deed and muniments of title were offered and received in evidence, oral testimony was introduced as to the proper boundaries of the respective lots, the location of the fences, the nature and extent of the possession of the premises by the present respective owners and their predecessors in title, and from this volume of evidence we are asked to pass upon the legal rights of the parties. We cannot take from the respondent the right to have these questions of fact submitted to a jury according to the rules of law; to that mode of trial he is entitled under the Constitutien.

It follows, therefore, that equity has no jurisdiction of this case, and the decree must be reversed. We do not express any opinion respecting the merits of the controver; under the circumstances this would be improper.—*Pittsburg Legal Journal.*

Party Wall.

The New York Court of Common Pleas, in the case of Weeks v. McMillan, has decided an interesting question relative to the liability of a grantee of a lot of land, for an agreement made by his grantor, to pay to the owner of an adjoining lot a certain sum in case he should use the party wall erected on said lot. In this case, the plaintiff's testator built a wall on the dividing line of a lot owned by him, and the lot adjoining owned by one Woodruff, with the consent of the latter, one-half upon his own land, and one-half upon the land of Woodruff; the two at the same time executing an instrument, under seal, whereby Woodruff, for himself, his heirs and assigns, agreed that, when he should use this wall as a party wall, he would pay plaintiff's testator $350. Through several mesne conveyances Woodruff's lot became the property of the defendant. All the conveyances were expressly made subject to said agreement, of which and of the existence of the wall, defendant, when he became owner, had full knowledge. In this action to recover $500 as damages for trespass, because defendant, in building a house, made use of so much of the wall as stands upon his own lot, the court held that defendant was not liable upon any covenant express or implied, and was no trespasser, even though he knew that the person entitled to be paid for the building of the wall had not been paid.

Judge Van Hoesen, in delivering the opinion of the court, said: "I cannot distinguish this case from Scott v. McMillan, 8 Daly, 320; 76 N. Y., 141. I do not think the rights of the parties are at all changed by calling this an action for trespass. There has been no trespass, however. The agreement is very loosely drawn, and it purports to bind Woodruff, his heirs and assigns, for the acts of Woodruff only. There is no clause in the agreement that binds, or purports to bind, the grantees of Woodruff to pay for the wall if they should use it. The words are, "The party of the second part (Woodruff) for himself, his heirs and assigns, agrees with Frost, his heirs and assigns, that when he (Woodruff) shall use the wall as a party wall, or any part of it any manner, he (Woodruff) will pay to Frost, his heirs and assigns, $350."

The cases of Cole v. Hughes, 54 N. Y.,

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444, and Scott v. McMillan, *supra*, show that when McMillan, a remote grantee of Woodruff, used the wall which he found upon his own land, he did not become bound to pay the amount that Woodruff had agreed to pay. McMillan was not liable upon any covenant, express or implied. Nor was he a trespasser in making use of his own land and its appurtenances, even though he knew that the person entitled to be paid for the building of those appurtenances had not been paid.—*The Daily Record.*

Injunction in Advance of Legal Adjudication.

In Earhardt v. Boaro (argued October Term, 1884, in the Supreme Court of the United States, decided March, 1885), the Supreme Court acted on the maxim that a court of equity may enjoin waste, etc., without waiting for the termination of litigation as to legal title, and gave this rule the clear sanction of reversing the decision in which the court below refused an injunction or dissolved an injunction, and remanded the case with directions to restore the injunction until final determination of the litigation at law.

Field, J., in delivering the opinion of the court, says: It was formerly the doctrine of equity, in cases of alleged trespass on land, not to restrain the use and enjoyment of the premises by the defendant when the title was in dispute, but to leave the complaining party to his remedy at law. A controversy as to the title was deemed sufficient to exclude the jurisdiction of the court. In Pittsworth v. Hopton (6 Vesey, 51) which was before Lord Eldon in 1801, he is reported to have said that he remembered being told in early life from the bench "that if the plaintiff filed a bill for an account and an injunction to restrain waste, stating that the defendant claimed by a title adverse to his, he stated himself out of court as to the injunction." This doctrine has been greatly modified in modern times, and it is now a common practice in cases where irremediable mischief is being done or threatened, going to the destruction of the substance of the estate, such as the extracting of ores from a mine, or the cutting down of timber, or the removal of coal, to issue an injunction, though the title to the premises be in litigation. The authority of the court is exercised in such cases, through its preventive writ, to preserve the property from destruction pending legal procedings for the determination of the title. Jerome v. Ross, 7 Johns. Ch., 315, 332; Le Roy v. Wright, 4 Sawyer, C. C., 530, 535.

[Compare Lacustrine, etc., Co. v. Lake Guano Co., 82 N. Y., 476, aff'g 19 Hun, 47.]

NOTES OF RECENT DECISIONS.

Set Off: Insolvent Bank; Special Tax-Bills.—A depositor in an insolvent bank may claim the right of set-off of his demand against special tax-bills assessed on his property and issued by the city to a contractor, in payment for public improvements, and held by the bank at the time of its assignment. [City of Kansas, etc., v. Ridenour. S. C. Mo. 20 C. L. J., 251.]

Railroad Ticket Obtained from R. R. Co. by Fraud, but used by Innocent Purchaser, Invalid.—1. When the possession of a railroad passenger ticket, which entitles the holder to one first-class passage between points named therein, has been fraudulently obtained from the company, a person purchasing such ticket from the holder thereof, although for value and without notice of equities, acquires no title thereto.

2. An agent, authorized to sell such tickets, and stamp and deliver the same upon receiving pay therefor, cannot bind his company by stamping and delivering such tickets without the knowledge or consent of its proper officers, to a third person, to be sold by him, and to be paid for when sold. [Frank v. Ingalls, Receiver, etc. Sup. Ct. of Ohio. Sept. 30, 1884].

Maritime Liens: Liens Given by Law; How Enforced in United States District Court.—When it is attempted in the district court to give effect to liens created by State laws, they are enforced subject to all the qualifications and limitations imposed by those laws. [The Kingston. U. S. Dist. Ct., D. New Jersey. March 4, 1885. 23 Fed. Rep., 200.]

The Courts.

U. S. Supreme Court Proceedings.

MAY 4, 1885.

Joseph W. Merriam, of Chicago, Ill.; Thomas Hunt, of New York city, and James A. Roberts, of Buffalo, N. Y., have been admitted to practice.

No. 256. The Atlantic Phosphate Company v. John C. Grafflin; judgment affirmed with costs and interest. Opinion by Mr. Justice Blatchford.

No. 259. James B. Clark v. The Beecher Manufacturing Company; decree affirmed with costs. Opinion by Mr. Justice Blatchford.

No. 263. William R. Schofield v. The Chicago, Milwaukee & St. Paul Railway Company; judgment affirmed with costs. Opinion by Mr. Justice Blatchford.

No. 267. W. H. Crump v. H. K. Thurber; decree reversed with costs and cause remanded with a direction to remand it to the State court, for want of jurisdiction, with costs to Crump against Thurber, in the circuit Court. Opinion by Mr. Justice Blatchford.

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No. 193. Charles Stuart Wevits et al. v. Amos Hoagland et al., commissioners, etc.;

No. 192. The Crane Iron Company v. Amos Hoagland et al.; judgments affirmed with costs. Opinion by Mr. Justice Gray.

No. 224. The Beecher Manufacturing Company v. The Atwater Manufacturing Company et al.; decree reversed with costs and cause remanded with directions to dismiss the bill with costs. Opinion by Mr. Justice Gray.

No. 253. Arthur G. Brown, administrator, etc., v. The State of Maryland et al; decree affirmed with costs. Opinion by Mr. Justice Gray.

No. 1118. The Wabash, St. Louis & Pacific Railway Company v. Benjamin F. Ham et al.; decree reversed with costs and cause remanded with directions to disallow the lien claimed by the holders of equipment bonds. Opinion by Mr. Justice Gray.

Nos. 249 and 1242. John F. Wollensak v. Frank A. Reihrer; decrees affirmed with costs. Opinion by Mr. Justice Matthews.

No. 269. James E. S. Hadden et al., etc., v. Edwin A. Merritt, collector, etc.; judgment affirmed with costs. Opinion by Mr. Justice Matthews.

No. 1240. Andrew Stewart et al., etc., v. James H. Dunham et al., etc.; appeal as to all the appellees except Dunham, Buchley & Co.; dismissed for the want of jurisdiction, and decree as to Dunham, Buchley & Co. reversed with costs and cause remanded with directions to dismiss the bill as to them. Opinion by Mr. Justice Matthews.

No. 905. P. T. Moore v. Samuel C. Greenhow, treasurer, etc.; judgment affirmed with costs. Opinion by Mr. Justice Matthews.

No. 264. John S. Mayfield v. Mary E. Richards et al.; judgment reversed with costs and cause remanded with instructions to enter judgment that the claim of Mayfield, based on the nine notes of Walter O. Winn, is a legal and valid debt due from his succession and that it was properly placed in the provisional account of the dative testamentary executor as an ordinary claim. Opinion by Mr. Justice Woods.

No. 268. James S. Phillippi v. Antonio Phillippe et al.; decree affirmed with costs. Opinion by Mr. Justice Woods.

No. 241. Benjamin H. Smith et al. v. John S. Woolfolk; decree affirmed with costs and interest. Opinion by Mr. Justice Woods.

No. 217. Stephen B. Sturges v. Merchant Carter, treasurer, etc.; judgment affirmed with costs and interest. Opinion by Mr. Justice Woods.

No. 252. The New Orleans Spanish Fort & Lake Railroad Company v. George Delamore et al.; decree reversed with costs and cause remanded with instructions to render a decree enjoining and restraining the defendants from advertising or selling, or offering for sale upon the execution described in the bill, the right of way and franchises granted by the city of New Orleans to the Canal Street, City Park & Lake Railroad Company, by ordinance No. 4523, administrative series, dated May 21, 1878. Opinion by Mr. Justice Woods.

No. 266. The United States v. Richard B. Carson; judgment reversed and cause remanded with directions to dismiss the petition. Opinion by Mr. Justice Harlan.

No. 272. The Martinsburg & Potomac Railroad Company v. James March; judgment reversed with costs and cause remanded with directions to set aside the verdict and grant a new trial, and for such further proceeding as may be consistent with the opinion of this court. Opinion by Mr. Justice Harlan.

No. 246. Peter O. Straley et al. v. Amariah H. Bradner et al.; judgment affirmed with costs. Opinion by Mr. Justice Harlan.

No. 250. Ex parte in the matter of Louis Reggel; decree affirmed with costs. Opinion by Mr. Justice Harlan.

No. 291. The Union Pacific Railway Company v. Abram Myers; in error to the Circuit Court of the United States for the District of Kansas.

No. 461. Same v. The City of Kansas;

No. 810. Same v. Lucia Knuth;

No. 980. Same v. Frank Hatwood.

No. 610. The Texas & Pacific Railway Company v. A. F. McAllister; in error to the Supreme Court of the State of Texas;

No. 797. Same v. Laura Kirk;

No. 824. Same v. James Murphy;

Judgments reversed with costs and causes remanded, with directions to enter a judgment in conformity with the opinion of this court. Opinion by Mr. Justice Bradley, Mr. Chief Justice Waite and Mr. Justice Miller dissenting.

No. 105. The Provident Savings Life Assurance Society of New York v. Daniel W. Ford; judgment affirmed with costs. Opinion by Mr. Justice Bradley.

No. 23. Samuel S. Brown et al. v. James D. Houston, State tax collector, et al.; judgment affirmed with costs. Opinion by Mr. Justice Bradley.

No. 243. The Fort Leavenworth Railroad Company v. P. G. Lowe; judgment affirmed with costs. Opinion by Mr. Justice Field,

No. 262. The Chicago, Rock Island & Pacific Railway Company v. William McGlinn; judgment affirmed with costs. Opinion by Mr. Justice Field.

No. 244. George W. Frasher et al. v. M. J. O'Connor; judgment affirmed with costs. Opinion by Mr. Justice Field.

No. 312. B. F. Good et al. v. M. J. O'Connor; judgment affirmed with costs. Opinion by Mr. Justice Field.

No. 313. Daniel Hazard et al. v. M. J. O'Connor; judgment affirmed with costs. Opinion by Mr. Justice Field.

No. 265. Henry Erhardt v. Manerva Hogaboom; judgment affirmed with costs. Opinion by Mr. Justice Field.

No. 216. Rebecca Gray, administratrix, etc., v. The National Steamship Company; decree affirmed with costs. Opinion by Mr. Justice Field.

No. 219. William Alling, surviving partner, etc., v. The United States; judgment reversed and cause remanded with directions to dismiss the petition for want of jurisdiction. Opinion by Mr. Justice Miller.

No. 248. The Richmond Mining Company of Nevada v. E. H. Rose et al.; judgment affirmed with costs. Opinion by Mr. Justice Miller.

No. 279. E. S. Wheeler & Co. v. The New Brunswick & Canada Railroad Company; judgment affirmed with costs and interest. Opinion by Mr. Justice Miller; Mr. Justices Blatchford, Field, Harlan and Matthews dissenting.

No. 1303. Philip S. Wales v. Wm. C. Whitney, Secretary of the Navy; decree affirmed with costs. Opinion by Mr. Justice Miller.

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Nos. 42 to 55 and 163, 164 and 165. Calvin Amory Stevens et al. v. The Memphis & Charleston Railroad Company and other railroads; decrees affirmed with costs. Opinion by Mr. Chief Justice Waite, Mr. Justice Harlan dissenting. Mr. Justice Matthews and Mr. Justice Blatchford took no part in the decision of these cases.

No. 222. Gwillim R. Gwillim v. John F. Donnellan et al.; judgment affirmed with costs. Opinion by Mr. Chief Justice Waite.

Mo. 273. James Grant v. George H. Parker; decree affirmed with costs. Opinion by Mr. Chief Justice Waite.

No. 278. The Steamboat Charles Morgan, etc., v. Martin H. Kouns et al.; decree affirmed with costs and interest. Opinion by Mr. Chief Justice Waite.

No. 287. John S. Pirie et al. v. Evan J. Tvedt et al.; judgment affirmed with costs. Opinion by Mr. Chief Justice Waite; Mr. Justice Harlan and Mr. Justice Woods dissenting.

No. 156. Francis Dodge et al. v. Thomas Knowles; motion to set aside judgment entered April 13, 1885, and to dismiss the appeal denied. Opinion by Mr. Chief Justice Waite.

No. 8, original, Ex parte. In the matter of Ellis G. Hughes, petitioner; motion for retaxation of costs, so far as it relates to printing briefs, denied, and otherwise granted. Opinion by Mr. Chief Justice Waite.

No. 115. Mason M. Hill v. William Martin; motion to reinstate case denied. Opinion by Mr. Chief Justice Waite.

No. 839. Morris Ritcher v. George Jerome et al.; motion for a commission to take testimony denied Opinion by Mr. Chief Justice Waite.

No. 1169. C. W. Lea and James D. Perkins v. Frank Deakin; motion for leave to docket case dismissed under ninth rule granted upon payment of costs. Announced by Mr. Chief Justice Waite.

No. 1290. The Missouri Pacific Railway Company v. Patrick Mackey; motion to dismiss or affirm denied. Announced by Mr. Chief Justice Waite.

No. 1234. The Chicago & Northwestern Railway Company v. Gus. B. Ohle; motion to advance under thirty-second rule granted. Announced by Mr. Chief Justice Waite.

No. 73. The Knickerbocker Life Insurance Company v. P. H. Pendleton et al.; judgment of 5th of January, 1885, set aside and cause restored to the docket for reargument at the next term. Announced by Mr. Chief Justice Waite.

Order. The reporter having represented that, owing to the number of decisions at the term, it will be impracticable to put the reports in two volumes, it is therefore now here ordered by the court that he publish an additional volume in this year. Announced by Mr. Chief Justice Waite.

Order. It is now here ordered by the court that all the cases on the docket not decided, and all the other business of the term not disposed of by the court, be and the same are hereby continued until the next term of the court.

No. 310. William Craig v. Thomas Leitensdorfer; reversed with costs per stipulation.

No. 793. Virginia B. Matthews v. David R. Murchism et al.; dismissed with costs per stipulation.

No. 1103. Irving Champlin, administrator, etc., v, Fannie F. Sparrow et al.; dismissed with costs by appellant.

No. 1313. James Freeborn et al. v. The California Artificial Stone Paving Company; docketed and dismissed with costs.

Adjourned unto the time and place appointed by law.

SUPREME COURT OF THE DISTRICT OF COLUMBIA

GENERAL TERM.

May 11, 1885.

Frankenburg v. Weyl. Argued and submitted.
Barnard v. Hitz et al. Decree of special term affirmed with costs.
Hine v. Magarity. Motion to dismiss for want of printing.

May 12, 1885.

Cornwell v. Steam Dredge Co Motion for new trial argued.
B. & P. R. R. Co v. Edmonds et al. Bill dismissed.
Patch v. Davis et al. Argument begun.

May 13, 1885.

Cornwell v. Steam Dredge Co. Motion for new trial denied.
Hatch v. Davis. Argued and submitted
Collins v Johnson. Final decree passed
Harris v Dammann. Submitted,

May 14, 1885.

Frankenburg v. Weyl. Judgment of special term reversed.
Fisher v. Lighthall. Argued and submitted

May 15, 1885.

District of Columbia v. L. J. Young. Argued and submitted.
McGill v. District of Columbia. Argument begun.

IN EQUITY.—New Suits.

May 7, 1885.

9428. Miranda C. Dunnington v. W. W. Dunnington. For divorce Com sol, W. A Cook
9429. Leonard Brulatour v. May Brulatour. For divorce. Com sol. J. Coleman.
9430 Josiah V. Grant v. Wm. A. Stewart et al. To set aside trust Com sols, Murray and Walter.
9431. Mary L. Ford v. John B. Ford. For divorce. Com sol, C. M. Smith.

May 8, 1885.

9432. Barbara M. Baier v. Ulrich Bauf. Injunction. Com sol, W. F. Mattingly.
9433. Charlotte A. Martin et al. v. Wm S. Buchly et al. For sale. Com sols, Edwards & Barnard.

May 9, 1885.

9434. John Leary, Est. of. Upon petition of Hannah Leo. To encumber. Com sol, W, P. Lasselle.

May 11, 1885.

9435. Joseph W. Babe v. Christopher C. Kibble et al. For conveyance. Com sol, I. G. Kimball.

May 12, 1885.

9436. Lewis B. Parker et al. v. Wm H. Parker. To sell, Com sols, Birney & Birney.
9437. Wm. R. Davis v, Catharine Davis. Com sols, Hewlett & Shea.
9438. John D. Davis v. Isabella Davis. For divorce. Com sol, A. K. Browne.

May 13, 1885

9439, Elizabeth Sweeney et al. v. John Stewart et al. To sell Com sol. J. J. Darlington.
9440. Chas. King v. Wm. J. Acker. To annul tax deed. Com sol, W. Willoughby
9441. John H. King et al. v. Wm Watson et al. To sell, Com sol. J. H Wilson.
9442. The Cent. Trust Co, of N. Y., v. The South Md. R. R. Co For receiver. Com sols, Stillman, Hubbard and Lambert.

May 14, 1885.

9443. W. J Newton, ex'r, v. Marion Osborn et al. Creditor's bill. Com sols. Newton & Berryman.
9444. Levi Curry v. James C Dulin et al. Judg't, creditor's bill. Com sols, same.
9445 Alva E Campbell v L. G. Hine. Injunction. Com sols, Riddle, Davis & Padgett.

May 15, 1885

9446. Edward Freeman v. Lucy Fremad. For divorce. Com sol, R J Murray.
9447. Wilhelmina Mattern v. John V. Mattern. For divorce. Com sol, C. A. Walter.

CIRCUIT COURT.—New Suits at Law.

May 7, 1885.

26137. Amelia L. Van Buskirk v. Wm C, Murdock. Note, $576.30. Piff's atty, John F. Ennis.

May 8, 1885

26138. Chas F. E. Richardson et al v, The District of Columbia. Damages, $50,000. Piff's attys, Richardson and Chesney.
26139. Columbus Buggy Co. v. James W. Pumphrey. Note. $97. Piff's atty, A. A. Lipscomb.
26140. L. H, Schneider & Son v. Wm. F. Lutz. Appeal. Piff's attys, Appleby & Edmonston.

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26141 Joseph H. Hazleton v. Barton & Logan. Appeal. Defts atty, W. S. Abert

26142. Walter G. Brown v Edgar W. Dennison. Notes and acct., $156,46 Piffs attys. Murdock & Browne.

26143. Rosa Gasch et al v. The B & O R. R. Co. Damages, $5,000. Piffs attys. Garnett and Maedel

26144. J B Bryan & Bro. v Jeremiah Horalson. Acct., $3,707 Piffs atty, E H. Thomas.

May 9, 1885.

26145. The District of Columbia v. Samuel H. Sherwood. Appeal. Defts atty, A. G Riddle.

26146 Nancy Kerns v. Frank H. Hume. Appeal.

26147. Wm. H Horstmann & Sons v. John T. Mitchell. Acct., $98 55. Piffs atty, C. C. Cole.

May 11, 1886

26148. John Scanlon v. Bernhardt Klein. Appeal. Defts atty, T. F. Miller.

26149 The Vestry of St. John's Parish v. James L. Thomas. Acct., $600. Piffs atty, James Lowndes.

26150. Mary M. Frick v Isaiah Brooks et al. Appeal. Defts atty E H. Thomas.

26151. Charles E. Creecy v. Anna R. Allan Appeal. Defts atty, F ancis Miller.

26152. E A. Edmonston, jr. v. R O. Edmonston. Appeal. Piffs atty, C. A. Elliot.

26153. George Hill jr, v. Th mas J. Brady. Notes, $1100 Piffs atty, F. W. Jones.

May 12, 1885

26154. John A. Middleton v. Edwin B. Hay. Appeal. Defts attys, Carusi & Miller.

26155 Lansburgh & Bro. v. Mary E. Plummer et al. Note, $200 Piffs atty J. J. Wilmarth.

26156. Winafred Kelly v. J. E. Divver Appeal Defts atty, D. O'C. Callaghan.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of William Henry Harrison, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of April, 1885.

JEROME A. JOHNSON,
20 Executor.

THIS IS TO GIVE NOTICE,

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John Walker Maury, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of May, 1885.

C. B. MAURY,
WM. A. MAURY, Solicitor. 20 Administrator.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of William A. Webster, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of May, 1885.

CATHARINE. WEBSTER,
E. H THOMAS, Solicitor. 20 Executrix.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Laura O. Taylor, late of the District of Columbia deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of April, 1885

GEORGANNA C. BIRD,
O. T. THOMPSON, Solicitor. 20 Executrix.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Mary Jane Martin, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of May, 1885.

ELIZA C. THOM,
A. B. DUVALL, Solicitor. 20 Admistratrix.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Elizabeth Margaret Jones, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of May, 1885.

20 GEO. T. JONES, Executor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 15, 1885.

In the matter of the Estate of Edward Foreman, deceased late of City of Washington, District of Columbia.

Application to take proof whether certain written papers filed in the matter of the estate of said Edward Foreman, should be admitted as the last Will and Testament of said Edward Foreman, and for Letters of Administratron on the estate of the said deceased, has this day been made by Fannie V. Baggett and William J Miller.

All persons interested are hereby notified to appear in this court on Friday the 12th day of June next at 10 o'clock, a. m., to show cause why the said paper writings should not be proved and admitted to Probate as the last Will and Testament of said Edward Foreman, and Letters of Administration or letters of administration with will annexed on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter and The Evening Star, previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: H. J. RAMSDELL,
Register of Wills for the District of Columbia.

CARUSI & MILLER, Solicitors. 20

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Holding a Special Term for Orphans Court Business. May 11th, 1885.

In the matter of the estate of John Carter Ramsden, late of Gisthorpe, Parish of Filey, County of York. England, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Samuel Webb Parker and Henry Blackman in favor of Henry C. Hazard.

All persons interested are hereby notified to appear in this court on Friday, the fifth day of June next at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 20 H. J. RAMSDELL, Register of Wills.

R. D. MUSSEY, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 14th day of May, 1885.

MAGGIE E. PAYNE
v. } No. 9227.
THOMAS J. PAYNE.

A bill for divorce on the ground of desertion.

On motion of the plaintiff by Mr. Frank T Browning, her solicitor, it is ordered that the defendant Thomas J. Payne, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice
True copy. Test: 20 R. J. MEIGS, Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 4th day of May, 1885

MARTHA L. CATTIN v. BERTRAM E. CATTIN. } No. 9423.

Application for divorce on the ground of desertion.

On motion of the plaintiff, by Mr. J. T Power, her solicitor, it is ordered that the defendant, Bertram E. Cattin, cause his appearance to be entered herein on or before the first rule-day, occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B HAGNER, Justice.
True Copy Test: 19 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 4th day of May, 1885.

HUGH DONOHO v. JAMES BYRNES et al. } No. 9422. Eq. Doc. 24.

On motion of the plaintiff, by Messrs. Hanna & Johnston, his solicitors, is it ordered that the defendants, Wilmer S. Shepherd and James Byrnes, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 19 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 6th day of May, 1885.

HENRY FETTER v. THOMAS J. LOGAN et al. } No. 9340. Equity.

On motion of the plaintiff, by Mr. Saville, his solicitor, it is ordered that the defendant, Frederick S. Bletz, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 19 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 9th day of May, 1885.

SARAH E. CHASE v. DENNIS TIERNEY et al. } No. 9409. Equity.

On motion of the plaintiff, by Mr. Duhamel, her solicitor, it is ordered that the defendant, Mathilda Kaufman, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
True copy. Test: 19 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 5, 1885.

In the matter of the Estate of Thomas I. Middleton, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Elizabeth Middleton, widow, who prays that Benjamin F. Leighton may be appointed Administrator.

All persons interested are hereby notified to appear in this court on Friday the 29th day of May next, at 11 o'clock, a. m., to show cause why Letters of Administration to said Benjamin F. Leighton, on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 19 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, the 1st day of May, 1885.

In the matter of the Estate of George Taylor, late of Washington City, District of Columbia, deceased.

The petition of Jno. StC Brookes asking that Letters of Administration on the estate of the said deceased may be granted to Julian T. Burke, of Alexandria, Va., has this day been made.

All persons interested are hereby notified to appear in this court on Friday, the 22d day of May next at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to said day.

By the Court. A. B. HAGNER, Justice.
Test: 19 H. J. RAMSDELL, Register of Wills.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 8th, 1885.

In the matter of the Estate of Adolphus H. Pickrell, late of the District of Columbia, deceased

Application for Letters de bonis non c. t. a. on the Estate of the said deceased, has this day been made by The Farmers & Mechanics' National Bank of Georgetown, D. C.

All persons interested are hereby notified to appear in this court on Friday, the 29th day of May, 1885, at 11 o'clock m., to show cause why Letters de bonis non c t a. on the estate of said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 19 H. J. RAMSDELL, Register of Wills.
CHAS. M. MATTHEWS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 1st, 1885.

In the matter of the Estate of Caleb Gardner, late of the Newport, State of Rhode Island, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration with the will annexed on the estate of the said deceased has this day been made by William F. Gardner and Cazenove G Lee.

All persons interested are hereby notified to appear in this court on Friday the 22d day of May next at 12 o'clock, m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration with the will annexed on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 19 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 8th, 1885.

In the matter of the Estate of James Kennedy, late of the District of Columbia, deceased.

Application for Letters of Administration d b.n. on the Estate of the said deceased, has this day been made by Elizabeth H. Du Hamel.

All persons interested are hereby notified to appear in this court on Friday the 29th day of May next at 11 o'clock, a. m., to show cause why Letters of Administration d b.n. on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test 19 H. J. RAMSDELL, Register of Wills.
HENKLE & DU HAMEL, Solicitors.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business. May 8th, 1885.

In the case of Margaret Sioussa, Executrix of Charles Sioussa, deceased, the Executrix aforesaid has, with the approval of the court, appointed Friday, the 5th day of June A. D. 1885, at 11 o'clock, a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executrix will take the benefit of the law against them Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 19 H. J. RAMSDELL, Register of Wills.
GEO. E. HAMILTON, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Holding a Special Term for Orphans' Court Business. May 4th, 1885.

In the case of Henry Polkinhorn, Administrator of H. Russel Taylor, dec'd, the Administrator aforesaid has, with the approval of the Court, appointed Friday the 29th day of May, A. D 1885, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test 19 H. J RAMSDELL, Register of Wills.
JESSE B. WILSON, Solicitor.

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Legal Notices.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Sarah C. Johnson, late of the District of Columbia, deceased

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 24th day of April, 1885.
REBECCA J. ADAMS,
WM. H. DENNIS, Solicitor. 19 Executrix.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Wm. Whisler, late of the U. S. Army, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on, or before the 8th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of May, 1885.
A. W. GREELY,
U. S. Army,
19 Signal Office.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Thomas J Irwin, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of April, 1885.
SUSAN IRWIN,
JOHN E. MCNALLY, Solicitory. 19 Administratrix.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Samuel Queen, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 1st day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day of May, 1885.
ANN W QUEEN,
R. P. JACKSON, Solicitor. 19 Executrix

THIS IS TO GIVE NOTICE.
That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of John Beck, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscribers on or before the 24th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under out hands this 24th day of April, 1885.
CHRISTIANRUP PERT,
JOHN L VOGT,
HANNA & JOHNSTON, Solicitors 19 Executors

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of Jenkin Thomas, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 18th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of April, 1885.
WM. RILEY DEEBLE.
GORDON & GORDON, Solicitors. 19 Administrator c.t.a.

Legal Notices.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Anton Heitmuller, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 24th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 24th day of April, 1885.
HENRIETTA HEITMULLR.
GEO F. APPLEBY, Solicitor. 19 Executrix.

THIS IS TO GIVE NOTICE.
That the subscriber, of Baltimore Co., Md., hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary ancillary on the personal estate of Francis Drummond, late of Baltimore County, Md., deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 5th day of May next; they may otherwise by law be excluded from all benefit of the said estate,

Given under my hand this 5th day of May, 1885.
BORGIA FARRELL.
IRVING WILLIAMSON, Solicitor. 19 Executrix.

THIS IS TO GIVE NOTICE.
That the subscribers of the District of Columbia hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Patrick Cullinane, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscribers on or before the 1st day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 1st day of May, 1885.
E. D. DONNELLY,
JOHN F. CULLINANE.
HINE & THOMAS, Solicitors. 19 Executors.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of Daniel Justus O'Connor, late of the District of Columbia, deceased.

All persons having claims again the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 25th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of April, 1885.
19 CHARLES C DUNCANSON.
C. A. WALTER, Solicitor 19 Administrator c t.a.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

JOHN LANG
v. } In equity. No. 9356.
MARGARET LANG et al.

This cause came on to be heard on the report of the trustee that he had sold all that piece or parcel of land and premises mentioned in the proceedings and described as follows: Beginning at a point on the west line of the seventh street plank road, twelve perches from the intersection of said west line with Taylor's Lane road, said point being the northeast corner of J. C Lewis' lot, running thence north 89°, west, 14 05 perches; thence north 2¼°, west, 8 02 perches; thence south 89°, east 14.05 perches, to the intersection with said west line of Seventh Street road; thence with said line of said road south 2¼°, east 8 02 perches, to the place of beginning, together with the improvements thereon, to Andreas Loffler, for (3,650) three thousand six hundred and fifty dollars; that the said purchaser has complied with the terms of sale, and that the said sale was fair and bona fide. And on motion of counsel, whereupon it is, this fourth day of May, by the court adjudged and ordered that the said sale be, and the same is, hereby ratified unless cause be shown to the contrary on or before the 4th day of June, A. D. 1885. Provided that a copy of this order be published once a week for each of three successive weeks in the Washington Law Reporter before that date

A. B. HAGNER.
A true copy. Test: 19 R. J. MEIGS, Clerk.
D. W. GLASSIE, Solicitor.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business. April 28th, 1885.

In the matter of the Estate of Caroline Burnet Hornblower, late of the City of Washington, District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by Joseph P. Bradley, of Washington, D. C.

All persons interested are hereby notified to appear in this Court on Friday, the 22d day of May next, at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B HAGNER, Justice.
Test: 18 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. April 28th, 1885.

In the matter of the Estate of Sarah Otterback, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Henry B. Otterback, who prays that Thomas E. Young and Lewis E. Tavenner may be associated with him,

All persons interested are hereby notified to appear in this court on Friday, the 22d day of May, next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B HAGNER, Justice.
Test: H. J. RAMSDELL, Register of Wills.
W. WILLOUGHBY, Solicitor. 18

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 28th day of April, 1885.

MARY S. LAMBELL, by MARY J RIPLEY, her next friend, Complainant,
v.
ROSA M. EVANS ET AL., Defendants.
} No 9402. Equity.

On motion of the complainant, by Messrs. Hagner & Maddox, her solicitors, it is ordered that the defendants, Joseph O. Evans, William L. Kimmell and Alice Kimmell, his wife, Andrew J. Kimmell and Gertrude Kimmell, his wife, Frank Kimmell and Ellen Kimmell, his wife, Mary E S Kimmell, Elizabeth Mann and Charles Mann, her husband, and Edward M. Burchard, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 18 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 1st, 1885.

In the matter of the Will of Peter Monaghan, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by Thomas Geary.

All persons interested are hereby notified to appear in this court on Friday the fifth day of June next at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 19 H. J. RAMSDELL, Register of Wills.
JOHN E. MCNALLY, Solicitor.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Dennis Austin McCarthy, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of April, 1885.

ANNE MCCARTHY,
S. S HENKLE, Solicitor. 18 Administrator.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c t. a. on the personal estate of John Diggan, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 24th day of March, 1885.

BENJAMIN F. RITTENHOUSE,
GORDON & GORDON, Solicitors. 18 Administrator c t.a.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John Feldman, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 24th day of March, 1885.

BENJAMIN F. RITTENHOUSE,
GORDON & GORDON, Solicitors. 18 Administrator.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Edward M. Spedden, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of April, 1885.

I. L JOHNSON,
18 Executor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 1st day of May, 1885.

JOHN HITZ
v.
GERTRUDE HITZ ET AL.
} No 9036. Equity.

On motion of the plaintiff, by Mr. W. B. Webb, his solicitor, it is ordered that the defendants, John C. Casparis, and Alexander L. Casparis, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
True copy. Test: 18 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

DOUGLAS ET AL.
v.
WILLIAMS ET AL.
} No. 8909. Eq. Doc., 23.

Irwin B. Linton, trustee herein, having reported a sale of part of lot numbered five (5) in square numbered one hundred and seventeen (117) in the city of Washington, District of Columbia, being the west sixteen (16) feet front on north L street, of said lot five (5) by the depth thereof, with the improvements and appurtenances to Charles B. Bailey, for the sum of six hundred and seventy (670) dollars.

It is, this 22d day of April, A. D. 1885, ordered that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 18th day of May, 1885. Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said day.

By the Court. A B. HAGNER, Justice.
A true copy 17-3 Test: R J. Meigs, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, this 1st day of May, 1885.

JAMES B. HOUSTON
v.
MARY T. GARLAND ET AL.
} In Equity. No. 8962.

Ordered this 1st day of May, 1885, that the offer of Dwight J. Partello, to purchase at private sale the west 24.76 feet by depth of lot seven in square one twenty-one and improvements, as reported by the trustees herein, be, and the same is, hereby accepted and the said sale is hereby ratified and confirmed unless cause to the contrary be shown on or before June 2nd, 1885 Provided a copy of this order be published once a week for three successive weeks prior to said day in the Washington Law Reporter.

The report states the amount of sales at $5,500.

By the Court. A. B. HAGNER, Justice.
True copy. Test: 18 R. J. MEIGS, Clerk.

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Washington Law Reporter

WASHINGTON - - - - - - - - May 23, 1885.

GEORGE B. CORKHILL - - - EDITOR

WE have received the initial number of the *Texas Court Reporter*. It will prove an excellent journal judging from this number. It contains the important and useful decisions of the Supreme Court and Court of Appeals of Texas, and decisions of other courts which have reference to Texas jurisprudence. This number contains sixty-four pages and a vast amount of valuable legal literature. It is edited by W. B. Dunham, of Austin, Texas, and is published by Eugene Von Boeckmann & Co., of the same place. We extend our kindest wishes for its future success.

BOOK NOTICES.

ESTEE'S PLEADINGS, PRACTICE AND FORMS, Adapted to Actions and Special Proceedings under Codes of Civil Procedure. By MORRIS M. ESTEE, counsellor at law. Third edition. Revised, enlarged and re-written by CARTER P. POMEROY, counsellor at law. In three volumes. A. L. BANCROFT & Co., Booksellers and Stationers. San Francisco. 1885.

This is a work which is already quite well known to the profession, the first edition having appeared in 1869, and the second edition in 1879. The third third edition, while it retains all the important features of the former editions, has been entirely reconstructed. In this edition the authorities have been placed at the bottom of the pages, as is now the general method, leaving the text unincumbered. The principal features of this valuable work consist in this, that it contains: 1st. Forms of every kind of actions that have been approved by courts of last resort. 2d. General Principles of Pleading as developed by Code Practice as contradistinguished from Pleading under the Common Law Practice Third. Under each form a digest of every point that can possibly arise. The third edition contains many new forms, and those of the former editions have been carefully revised, and those which had been noticed by the courts are particularly examined and revised.

This work has already been so long in the hands of the profession, and has always been so highly appreciated and so much used, that about all we can refer to is the great improvement which the third edition presents over its predecessors. Mr. Carter P. Pomeroy is too well known as an author to need any introduction to the profession from any one. He has fully sustained his excellent reputation in the vast amount of learning and labor which he has bestowed upon this work. While it is intended for use in those States having a code, or where the reform procedure obtains, yet it must be admitted upon careful examination, that it will prove valuable in many ways in those which retain the common law procedure. In the code States, Pomeroy's Estee will almost make a complete library in itself. Certainly a more valuable or useful work will not be found in the library of any lawyer who practices under a code. The publishers—Messrs. BANCROFT & Co.—have finished the volumes in excellent style. They are all finely printed on heavy paper, and are bound in the best of law sheep.

THE LAW OF PRESUMPTIVE EVIDENCE. Including Presumptions both of Law and of Fact, and the Burden of Proof both in Civil and Criminal Cases. Reduced to Rules by JOHN D. LAWSON, Author of a Similar Work on "The Law of Expert and Opinion Evidence." A. L. BANCROFT & Co., Law Book Publishers, Booksellers and Stationers San Francisco. 1885.

The contents of this valuable work are: Part 1, The Presumptions of Knowledge. Part 2, The Presumptions of Regularity and Innocence. Part 3, The Presumptions of Continuance and Uniformity. Part 4, The Presumptions in the Law of Real Property. Part 5, The Presumptions in Criminal Cases. Part 6, General Rules.

This work si certainly a valuable acquisition to the legal lore of the country. The various divisions of the subject are treated in a masterly manner, and each

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point is presented clearly and concisely. Such a volume will be welcomed by every lawyer, and we predict for it speedy popularity and a favorable opinion from the profession. The method adopted by the author of stating the propositions of law in the form of rules, has everywhere met with great favor and is a wonderful aid in getting down to the essence of the subject. This work is for the criminal lawyer as much as for the civil. The chapter on The Presumptions in Disfavor of Innocence is a model in its way, and should be carefully studied by every prosecutor. Mr. John D. Lawson is an author of great ability, and his works, with which the profession are well acquainted, are classed among the best upon their several subjects. The whole law of presumptive evidence is briefly and clearly set forth in this volume in 139 rules, which are all illustrated and commented upon. This work will prove of peculiar value to lawyers of all classes and under all forms of procedure, and will constitute a great acquisition to the judicial literature of this country. Messrs. Bancroft & Co. have excelled in the quality and manner of the mechanical execution of this volume, and the printing and binding are of the highest class.

Supreme Court District of Columbia

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY

ROBERT C. HEWETT
vs.
SAMUEL E. LEWIS, Administrator.

EQUITY. No. 7,756.

Decided March 23, 1885.
The CHIEF JUSTICE and Justices WYLIE and JAMES sitting

1. Verbal admissions ought to be received with great caution; the evidence consisting as it does in the mere repetition of oral statements, is subject to much imperfection and mistake, the party himself either being misinformed, or not having clearly expressed his own meaning, or the witness having misunderstood him. It frequently happens also that the witness, by unintentionally altering a few expressions really used, gives an effect to the statement completely at variance with what the party actually did say. *So held* in a case where the court, citing the above from 1 Greenl. Ev., § 200, refused to disturb a written contract by evidence of admissions casually made in a conversation held many years before the date of the witness' testimony.
2. The Statute of Limitations is a good plea in bar of a suit against the representatives of a deceased partner for an account, if there have been no dealings within three years before the filing of the bill, and no admissions on the part of the testator or the representatives to take the case out of the statute.
3. The moment the partnership ceases, the partners become tenants in common of the partnership property.
4. Where an action of account would lie at law, and instead of an action at law being brought a resort is had to a bill in equity, the Statute of Limitations is just as imperative as it is at law; and wherever in any case an action at law would lie, the statute is just as obligatory in courts of equity as in courts of law.*

THE CASE is stated in the opinion.

COOK & COLE for plaintiff.

WM. F. MATTINGLY for defendant.

Mr. Justice WYLIE delivered the opinion of the court.

Robert C. Hewett and Thomas Lewis were contractors under the District government some years ago. Lewis held the contract in his name, but Hewett was interested as a partner.

On the 31st of July, 1875, having closed their work under their contract, they had a settlement, and the property was divided, each one taking his own share and they interchanged receipts, Hewett receipting to Lewis for his share and Lewis receipting to Hewitt for his share. It was a final settlement with the exception that both receipts reserved the right of the parties in collections that might afterwards be made, on account of their contracts, from the District government, and when collected thoy were to be divided. There was no reservation in these receipts as to any property except these collections to be made from the District government, and, except as to them, they purport on their face to be a final settlement.

This was on the 31st of July, 1875. Thomas Lewis died in 1880, five years afterwards. In 1883, the bill was filed against the administrator of Thomas Lewis on the part of Hewett, praying for

*This case was decided upon the doctrine laid down in note 1 of the above syllabus. Notes 2, 3 and 4 are more properly but a digest of the individual views of the learned justice delivering the opinion, as will be seen by reference to his closing remarks.

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an account and a decree of one-half of the proceeds of a lot of tools amounting to over $2,700 in value which the complainant avers that Lewis retained at the time of the settlement which had not been disposed of and claiming that those tools did not enter into the settlement. The bill was filed nearly seven years after the settlement, and nearly three years after Lewis' death.

There has been a good deal of testimony taken in the case, mainly on the part of the complainant; and the strongest evidence in favor of the complainant in regard to these tools is that given by a witness named Hamilton. Hamilton was the complainant's bookkeeper, and he testifies that according to his understanding at the time, although he is not very positive about it, that these tools did not enter into the final settlement. But he testifies that in the fall of the year or in the early part of 1876, soon after the final settlement was made, that he had a conversation with Lewis in a saloon on Fifteenth street, in which Lewis told him that the partnership affairs had all been settled with the exception of the tools, and that Lewis seemed to be very much pleased that the business had been so settled.

Now it is sought, principally in consequence of this admission, to open this settlement and require an account on the part of these defendants mainly on that proof. As to the credit to be given to these admissions, it is laid down in section 200 of Greenleaf's Evidence, Vol. I, that:

"With respect to all verbal admissions, it may be observed that they ought to be received with great caution, the evidence consisting, as it does, in a mere repetition of oral statements, is subject to much imperfection and mistake, the party himself either being misinformed or not having clearly expressed his own meaning or the witness having misunderstood him. It frequently happens also that the witness, by unintentionally altering a few expressions really used, gives an effect to the statement at variance with what the party actually did say."

So that we think that the written contract of the parties ought not to be disturbed in this case by these admissions proved in that way and in that place. They might have been misunderstood. The omission of a few words might have changed the whole meaning, and it is not safe to overthrow the written agreements of parties by testimony of so weak a kind as admissions of this sort, the testimony concerning which is taken many years after the occurrence. On that ground alone we are of opinion that this bill ought to be dismissed.

But then there is the defence of the Statute of Limitations. It is said that here was a trust; here was a partnership continued as to this, and that no Statute of Limitations runs in such a case. But our statute says:

"All actions of trespass *quare clausum fregit*, all actions of trespass, detinue, surtrover or replevin for taking away goods or chattels, *all actions of account*, contract, debt, book or upon the case, other than such accounts as concerns the trade or merchandise between merchant and merchant, their factors and servants which are not residents within this province, all actions of debt for lending or credit without specialty, all actions of debt for arrearages of rent, all actions of assault, menaces, battery, wounding and imprisonment, or any of them, shall be sued or brought by any person or persons within this province, at any time after the end of this present session of assembly, shall be commenced or sued within the time and limitation hereafter expressed and not after; that is to say, *the said actions of account* and the said actions upon the case, upon simple contract, book debt or account, and the said actions for debt, detinue, and replevin for goods and chattels, and the said actions for trespass *quare clausum fregit*, within *three gears* ensuing the cause of such action and not after."

Here is a statute which bars the action of account in three years except as to accounts between merchant and merchant, and there is no pretense that this is an action between merchant and merchant. There are no books. The whole foundation for the claim in this case is a promise on the part of Lewis as alleged to account for this property.

A case very similar to this is that of

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Codman v. Rogers in 10 Pick., 112, where it is said—I read from the syllabus:

"A bill in equity for an account alleging a partnership between two by indenture, and a dissolution by the death of one of the partners, and a parol promise by the survivor to account to the plaintiff as executor of the deceased partner. It was held that the suit was not founded upon the indenture, but upon the subsequent parol contract, and, therefore, that the Statute of Limitations might be pleaded in bar."

That was a case where one of the partners had died, and the surviving partner promised the executor of the deceased partner to account for certain partnership property, and it was held that that was a case within the statute.

In Collier on Partnership, section 374, it is said:

"The Statute of Limitations is a good plea in bar of a suit against the representatives of a deceased partner for an account, if there have been no dealings within six years before the filing of the bill and no admissions on the part of the testator or the representatives to take the case out of the statute."

Our limitation is three years between partners, and the doctrine there is that between partners with no dealing between them, as is the case here, they are regarded as strangers. The moment the partnership ceases, the partners become tenants in common of the partnership property. This is laid down in section 545 of the same work, citing Murray v. Munford, 6 Cowen, 441.

Where an action of account would lie at law and instead of an action at law being brought a resort is had to a bill in equity, the Statute of Limitations is just as imperative as it is in a case of action at law.

In Kane v. Bloodgood, 7 Johns. Rep., 111, Chancellor Kent says at p 114:

"The trusts which are not reached or affected by the Statute of Limitations are those technical and continuing trusts which are not at all cognizable at law, but fall within the proper, peculiar and exclusive jurisdiction of courts of equity."

Then, at page 117, of the same case, he says:

"The statute is a bar to any demand from one tenant in common against another for an account further back than six years."

In this District it is three years. And at page 118 he says:

"Where there is a legal and an equitable remedy in respect to the same subject matter, the latter is subject to the same control of the statute as the former."

On page 122 of the same case and in Story's Equity, vol. II, par. 1520, is the same principle. In the case just cited Kent overrules his own decision made a few years before in the case of Coster v. Murray, reported in 5 Johns. Rep., 522. He says further in this opinion:

"The statute also applies to the case of a gratuitous bailment or trust."

It is an interesting discussion in regard to this question as shown in these two cases. In the case of Coster v. Murray, at page 521, he says:

"The other ground, taken by the plaintiffs' counsel appears to me to be decisive, in their favor, and to take the case out of the statute, without having recourse to a *proviso*, which, if originally clear upon the text itself, has been rendered perplexed and litigious, by the commentaries of counsel, and the contradictory doubts and decisions of courts.

If there was a trust created in the defendants, to account as agents or trustees, for these goods, or the avails thereof, the case is not within the statute, for that does not reach to matters of direct trust as between trustee and *cestui que trust.* (*Vide* the cases referred to in 1 Eq. Cas., Abr., 303. A. and 3 Johns. Ch. Rep., 216, 222.) It appears very clearly that here was a trust, a deposit to be accounted for. The defendants assumed the charge and direction of the goods in which the Columbian Insurance Company had an interest to one-third part. They became the agents or factors of the company, as to the amount of their interest, and were entitled to their reimbursement and indemnity for all charges and expenses incurred by them in the execution of the trust. The defendants were to have no commissions if they sold the goods, and the deposit with them was in the nature of a gratuitous bailment or trust. The

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parties were not partners, and accountable for each other's acts. They had respectively their *aliquot* shares of the cargo, shipped by the defendants from Copenhagen, and the latter had the possession and control of the entire interests of both parties, and assumed the direction and disposition of the whole, and were to account to the company for their proportion of the proceeds. This was a plain case of trust. The parties stood not in the relation of debtor and creditor, or of joint partners in trade, but in the relation of agent or factor and principal, and the Statute of Limitations does not apply to the case. In Godfrey v. Saunders, 3 Wils., 94, the defendant was sued in an action of account, as factor. He pleaded the Statute of Limitations, that there was not any open account between them within six years. The plaintiff replied, that he was a merchant, and the defendant his factor, and *had the care of goods to render an account*, and that the account concerned trade and merchandise, and was never adjusted. The defendant rejoined that the account did not concern trade and merchandise. Upon the trial this issue was given up by the defendant's counsel, and the jury found for the plaintiff, and there was a judgment *quod computet*. This is a case showing clearly that a factor is responsible upon an open account, though not within six years."

The nature of the case will be seen from the opinion as far as I have read. Now let us see what the chancellor says in Kane v. Bloodgood, 7th Johns. Ch., 91, a case which was very fully argued, and which contains one of the chancellor's most elaborate opinions. Referring to the case of Coster v. Murray, he says at page 128:

"In the still more recent case of Coster v. Murray, 5 Johns. Reps., 522, I referred generally to what was said by me in the preceding case, that the statute did not reach to matters of direct trust, as between trustee and *cestui que trust;* and I held that the statute did not apply to the case of a gratuitous bailment or trust. But though that decree was affirmed in the Court of Appeals, yet, I understand, it was upon other ground than that upon which I had rested the decree, and that the judges of the Supreme Court did not consider it as the case of a trust not within the reach of the statute, because an action at law, of account, or for money had and received, could have been sustained for the same matter, and the equitable remedy, in a case of concurrent jurisdiction, was subject to the same limitation as the legal. If I am not misinformed as to the decision, (for the case has not, as yet, been reported,) it is a decisive authority, in favor of the doctrine which I have now endeavored to deduce from the history of the cases; and it was the discussion upon the appeal in that very case, that led me to suspect that I had been misled by some of the earlier decisions, in the time of Charles II, on which I have now ventured to comment freely, and by the exceedingly loose manner in which the rule as to trusts, had been spoken of in the books."

After the dissolution of the partnership where the agreement is that one partner shall have the exclusive possession of a certain portion of the assets to dispose of, the right in the property is changed. During the partnership each has the same rights as the other in disposing of the property. After the dissolution of the partnership, there is nothing left except such agreement as may be made and which will bind the parties by its terms. The relation of the parties is changed. After a partnership is dissolved the partners become tenants in common in the property if there is no agreement to the contrary. But in this case these parties were not even tenants in common, because, if we believe the bill, this property was placed in the hands of Lewis to be disposed of and the proceeds to be accounted for to the other, and in that respect it is like the case of Kane v. Bloodgood. As to the Statute of Limitations, wherever an action at law would lie, it is just as obligatory in courts of equity as in the courts of law. The statute begins to run from the date of the contract. There is nothing in the exceptions to the statute regarding merchants' accounts which would take this case out of its operation, because there are no accounts between the parties. The last entry in the partnership books between

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these parties was in April, 1875, in regard to this very item. This action of account might have been brought within a week after the arrangement was entered into, if there was such an arrangement, and parties cannot be held forever in a case like this without protection, especially after one of the parties is dead, and an administrator, knowing nothing about the circumstances, is made the defendant.

In Story's Equity, vol. I, section 662, the author says:

"The most extensive and generally the most operative remedy at law between partners is an an action of account. This is the appropriate, and, except under very peculiar circumstances, the only remedy at the common law for the final adjustment and settlement of partnership transactions. It is a very ancient remedy between parties in which one naming himself a merchant may sue his partner for a reasonable amount, naming him a merchant, as the receiver of the moneys of himself, arising from whatever cause or contract, for the common profit of both according to the law merchant."

In place of the action of account at common law the remedy most in use is a bill for an account, but where the remedies are concurrent, the common law remedy and the equity remedy, the statute is a bar in both cases, and it does not remain with the court, according to its discretion, to apply the statute or dispense with it as they may think proper and as may be done in some other cases.

If this is to be regarded as partnership property, and if the partnership is to be regarded with respect to this property, an action of account would lie by one of the parties against the other, the one naming himself as a merchant, and the other as a merchant having mutual accounts. But in this case there are no mutual accounts. The statute, therefore, runs from the beginning, and that disposes of the matter.

I have expressed largely my own views in what I have said in regard to this case, but none of us entertain the slightest doubt about what the decree in the case should be, and that is that the bill should be dismissed.

United States Supreme Court.

No. 1303—OCTOBER TERM, 1884.

PHILIP S. WALES, Appellant,

vs.

WILLIAM C. WHITNEY, Secretary of the Navy.

Appeal from the Supreme Court of the District of Columbia.

Mr. Justice MILLER delivered the opinion of the court.

This is an appeal from a judgment of the Supreme Court of the District of Columbia, which refused to make an order on a writ of *habeas corpus* relieving appellant from the custody of the appellee, who, it is alleged, held the appellant in restraint of his liberty unlawfully.

Upon the decision of the Supreme Court of the District, adverse to petitioner, an application for an original writ of *habeas corpus* was made to this court by counsel for appellant, but, on a suggestion from the court that an act of Congress, at its session just closed, had restored the appellate jurisdiction of this court in *habeas corpus* cases over decisions of the circuit courts, and that this necessarily included jurisdiction over similar judgments of the Supreme Court of the District of Columbia, counsel, on due consideration, withdrew their application, and, appealing from the judgment of that court, bring here the record of it for review.

Section 846 of the Revised Statutes of the District of Columbia, which makes the jurisdiction of this court over judgments and decrees of the circuit courts of the United States the measure of its jurisdiction (except as regards the sum in controversy) over judgments and decrees of the Supreme Court of the District in similar cases, justifies the exercise of our appellate jurisdiction in the present case.

The original petition for the writ was addressed to Mr. Justice Cox of the Supreme Court of the District, and alleged that, on the second day of March, 1885, the petitioner was arrested and imprisoned, and ever since had so remained in arrest and imprisonment and restrained of his liberty in the District of Columbia, illegally. The petition sets out an order of the Secretary of the Navy, under which this restraint is exercised, which order is in the following terms:

"WASHINGTON, *February 28th*, 1885.

"SIR: Transmitted herewith you will receive charges, with specifications, preferred against you by the Department.

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"A general court-martial has been ordered to convene in rooms numbered 32 and 33, at the Navy Department, Washington, D. C., at 12 o'clock noon, on Monday, the 9th proximo, at which time and place you will appear and report yourself to Rear Admiral Edward Simpson, United States Navy, the presiding officer of the court, for trial. The judge advocate will summon such witnesses as you may require for your defence.

"You are hereby placed under arrest, and you will confine yourself to the limits of the city of Washington.

"Very respectfully,

"WM. E. CHANDLER,

"*Secretary of the Navy.*

"Medical Director

"PHILIP S. WALES,

"*U. S. N., Washington, D. C.*"

It also makes an exhibit to the petition a copy of the charges and specifications accompanying this order. It is unnecessary to say more of these charges at present than that they relate to derelictions of duty on the part of the appellant while he was Surgeon-General of the Navy, and as such had charge of the Bureau of Medicine and Surgery in the Navy Department, which office he held from August 20, 1879, to January 26, 1884. He had therefore ceased to be Surgeon-General, and was in the exercise of his functions as Medical Director of the Navy when this order was served on him.

Judge Cox issued the writ directed to William C. Whitney, Secretary of the Navy, who had become such by succession to Secretary Chandler. To this writ Secretary Whitney made return, stating the action of Secretary Chandler and the history of the appellant's connection with the navy since he was appointed Medical Inspector in June, 1873; the charges preferred against him as Chief of the Bureau of Medicine and Surgery, and the order of arrest of Secretary Chandler, and closes his return as follows:

"Your respondent respectfully submits that the said Philip S. Wales is not now, nor was at the time of issuing the annexed writ, in the custody or possession of, or confined or restrained of his liberty by your respondent, other than as appears by the papers marked A, B and C, attached hereto and made part of this return, and that the cause of such detention, if any there be, is fully shown in said exhibits.

"And your respondent further answers that neither he nor any one by his authority has exercised any physical restraint over the said Philip S. Wales before or since the issue of said writ.

"Your respondent further answers that by virtue of his office as Secretary of the Navy, the said Philip S. Wales, being a Medical Director in the Navy, was, at the time of the issuing of the said writ, and has since continually been, in the power of your respondent so far as the statutes of the United States and the regulations of the Navy, not inconsistent therewith, have vested him with authority over the said Philip S. Wales.

"Your respondent further says that he knows of no obstacle or impediment to prevent the said Philip S. Wales from being present before your honor at the time and place fixed in the said writ; but, in order to comply with the order of your honor, and under and by virtue of his authority as Secretary of the Navy, he has ordered the said Philip S. Wales to be present at the time and place so fixed. Wherefore the said William C. Whitney, Secretary of the Navy, has here, before your honorable court, the body of the said Philip S. Wales, together with the said writ, as therein he is commanded.

"W. C. WHITNEY,

"*Secretary of the Navy.*"

To this return the petitioner, by his counsel demurred, when, on this demurrer and after motion of the respondent to discharge the writ, Mr. Justice Cox certified the case into the court in General Term. That court, after full hearing and due consideration, made the following order:

"*Habeas Corpus.* No. 15,780.

"*Ex relatione* PHILIP S. WALES.

"This cause coming on for hearing, and having been argued by counsel and duly considered, it is, this 14th day of April, 1885, ordered and adjudged that the petition be dismissed with costs, the court being of opinion that the relator has not been, nor is he at this present, deprived of his personal liberty by virtue of the orders of the Secretary of the Navy set out in the petition.

"By the court. A. WYLIE."

It is from this order that the present appeal is taken.

The only other matter apparent in the record necessary to be stated at this time is, that the court-martial referred to in the order of arrest was duly appointed, assembled and organized, and that appellant appeared before it, and, at his request, it has been adjourned, from time to time, to await the result of these proceedings in *habeas corpus.*

Two questions have been elaborately argued before us, namely:

1. Does the return of the Secretary of the

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Navy to the writ and its accompanying exhibits show such restraint of the liberty of the petitioner by that officer, as justifies the use of the writ of *habeas corpus?*

2. If there is restraint, which, in its character, demands the issue of the writ, are the charges for which the petitioner is required to answer before the naval court-martial of the class of which such a court has jurisdiction?

The latter is a question of importance, and not free from difficulty, since its solution requires the court to decide whether the Surgeon-General of the Navy, as chief of the Bureau of Medicine and Surgery in the Department of the Navy, under the immediate supervision of the Secretary, is liable for any failure to perform his duties as Surgeon-General, to be tried by a military court, under the articles of war governing the Navy or has a right for such offences to be tried alone by the civil courts, and according to the law, for offences not military. Is he, in that character, in the civil or military service of the United States? The difficulty of stating the question shows the embarrassment attending its decision.

The other question, however, has precedence, both because it is the one on which the court of the District decided it, and because, if there was no such restraint, whether legal or illegal, as to call for the use of the writ, there is no occasion to inquire into its cause.

It is obvious that petitioner is under no physical restraint. He walks the streets of Washington with no one to hinder his movements, just as he did before the Secretary's order was served on him. It is not stated as a fact in the record, but it is a fair inference, from all that is found in it, that, as Medical Director, he was residing in Washington and performing there the duties of his office. It is beyond dispute that the Secretary of the Navy had the right to direct him to reside in the city in performance of these duties. If he had been somewhere else, the Secretary could have ordered him to Washington as Medical Director, and, in order to leave Washington lawfully, he would have to obtain leave of absence. He must, in such case, remain here until otherwise ordered or permitted. It is not easy to see how he is under any restraint of his personal liberty by the order of arrest, which he was not under before. Nor can it be believed that, if this order had made no reference to a trial on charges against him before a court-martial, he would have felt any restraint whatever, though it had directed him to remain in the city until further orders. If the order had directed him so to remain and act as a member of such court, can any one believe he would have felt himself a prisoner, entitled to the benefit of a writ of *habeas corpus?*

On the other hand, there is an obvious motive on the part of the petitioner for construing this order as making him a prisoner in the custody of the Secretary.

That motive is to have himself brought before a civil court, which, on inquiry into the cause of his imprisonment, may decide that the offence with which the Secretary charges him is not of a military character, is not one of which a naval court-martial can entertain jurisdiction, and, releasing him from the restraint of the order of arrest, it would incidentally release him from the power of that court.

But neither the Supreme Court of the District nor this court has any appellate jurisdiction over the naval court-martial, nor over officers which such a court has power to try. Neither of these courts is authorized to interfere with it in the performance of its duty, by way of a writ of prohibition or any order of that nature. The civil courts can relieve a person from imprisonment under order of such court only by writ of *habeas corpus*, and then only when it is made apparent that it proceeds without jurisdiction. If there is no restraint there is no right in the civil court to interfere. Its power *then* extends no further than to release the prisoner. It cannot remit a fine, or restore to an officer, or reverse the judgment of the military court. Whatever effect the decision of the court may have on the proceedings, orders or judgments of the military court, is incidental to the order releasing the prisoner. Of course, if there is no prisoner to release, if there is no custody to be discharged, if there is no such restraint as requires relief, then the civil court has no power to interfere with the military court, or other tribunal over which it has by law no appellate jurisdiction.

The writ of *habeas corpus* is not a writ of error, though in some cases in which the court issuing it *has* appellate power over the court by whose order the petitioner is held in custody, it may be used with the writ of *certiorari* for that purpose. In such case, however, as the one before us, it is not a writ of error. Its purpose is to enable the court to inquire, first, if the petitioner is restrained of his liberty. If he is not, the court can do nothing but discharge the writ. If there is such restraint, the court can then inquire into the cause of it, and if the alleged cause be unlawful, it must then discharge the prisoner.

There is no very satisfactory definition to

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be found in the adjudged cases of the character of the restraint or imprisonment suffered by a party applying for the writ of *habeas corpus*, which is necessary to sustain the writ. This can hardly be expected from the variety of restraints for which it is used to give relief. Confinement under civil and criminal process may be so relieved. Wives restrained by husbands, children withheld from the proper parent or guardian, persons held under arbitrary custody by private individuals, as in a mad-house, as well as those under military control, may all become proper subjects of relief by the writ of *habeas corpus*. Obviously, the extent and character of the restraint which justifies the writ must vary according to the nature of the control which is asserted over the party in whose behalf the writ is prayed.

In the case of a man in the military or naval service, where he is, whether as an officer or a private, always more or less subject in his movements, by the very necessity of military rule and subordination, to the orders of his superior officer, it should be made clear that some unusual restraint upon his liberty of personal movement exists to justify the issue of the writ; otherwise every order of the superior officer directing the movements of his subordinate, which necessarily to some extent curtails his freedom of will, may be held to be a restraint of his liberty, and the party so ordered may seek relief from obedience by means of a writ of *habeas corpus*.

Something more than moral restraint is necessary to make a case for *habeas corpus*. There must be actual confinement or the present means of enforcing it. The class of cases in which a sheriff or other officer, with a writ in his hands for the arrest of a person whom he is required to take into custody, to whom the person to be arrested submits without force being applied, comes under this definition. The officer has the authority to arrest and the power to enforce it. If the party named in the writ resists or attempts to resist, the officer can summon bystanders to his assistance, and may himself use personal violence. Here the force is imminent and the party is in presence of it. It is physical power which controls him, though not called into demonstrative action.

It is said in argument that such is the power exercised over the appellant under the order of the Secretary of the Navy. But this is, we think, a mistake. If Dr. Wales had chosen to disobey this order, he had nothing to do but take the next or any subsequent train from the city and leave it. There was no one at hand to hinder him. And though it is said that a file of marines or some proper officer could have been sent to arrest and bring him back, this could only be done by another order of the Secretary, and would be another arrest, and a real imprisonment under another and distinct order. Here would be a real restraint of liberty, quite different from the first. The fear of this latter proceeding, which may or may not keep Dr. Wales within the limits of the city, is a moral restraint which concerns his own convenience, and in regard to which he exercises his own will.

The present case bears a strong analogy to Dodge's case, in 6 Martin's Laws on Repeals, 569. It appeared there that the party who sued out the writ had been committed to jail on execution for debt, and having given the usual bond by which he and his sureties were bound to pay the debt if he left the prison bounds, he was admitted to the privilege of those bounds. The plaintiff in execution failing to pay the fees necessary to the support of the prisoner, the latter sued out a writ of *habeas corpus*.

That eminent jurist, Clinton Martin, said, on appeal to the Supreme Court: "It appears to us that the writ of *habeas corpus* was improperly resorted to. The appellee was under no physical restraint, and there was no necessity to recur to a court or judge to cause any moral restraint to cease. The sheriff did not retain him, since he had admitted him to the benefit of the bounds; the doors of the jail were not closed on him, and if he was detained, it was not by the sheriff or jailer. If his was a moral restraint, it could not be an illegal one. The object of the appellee was not to obtain the removal of an illegal restraint from a judge, but the declaration of the *court* that the plaintiffs in execution had by their neglect lost the right of detaining him. A judgment declaring such neglect, and pronouncing on the consequences of it, was what the appellee had in view." The judgment awarding the writ was reversed. The analogy to the case before us is striking.

A very similar case was passed upon by the Supreme Court of Pennsylvania in Republican v. Arnold and others, 3 Neales R., 263. A party who had been indicted for arson, and had given bail for his appearance to answer the indictment, applied, while out under bail, to be discharged by writ of *habeas corpus*, on the ground of delay in the prosecution. The court held that the statute of Pennsylvania, which was a remonstrant of the *habeas corpus* act of 31 Charles II, chap. 2, spoke of persons *committed* or *detained*, and clearly did not apply to a person out on bail. And Mr. Justice Neales very pertinently inquires, "would not

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a *habeas corpus* directed to the bail of a supposed offender be perfectly novel?" And Smith, J., said that the inclination of his mind was that *habeas corpus* could not lie to the bail.

In a note to the cases of Rex v. Davies and Rex v. Kessel, 1 Burrow's R., 638, the same principle is stated, though by which the note is made does not appear. Both these persons were brought before Lord Mansfield, in the King's Court, on a rule against the commissioners to enforce an act of Parliament to increase the army. In both cases the ground on which this discharge was asked was, that they were illegally pressed into the service. Lord Mansfield discharged one because his statement was found to be correct, and refused the other because his statement was not true.

The note to the report, apparently in explanation of the fact that they were not brought before the court by writ of *habeas corpus*, and that no objection was taken by the commissioner, says: "Neither of these could have brought a *habeas corpus;* neither of them was in custody. Davies had deserted and absconded, and Kessel had been made a corporal. No objection was made by the commissioner to the propriety of the method adopted. Chief Baron Comyn cites the cases as showing that the parties could not bring *habeas corpus*, because they were not in custody. (4 Comyn Dig., 313; *Habeas Corpus B.*) While the acts of Congress concerning this writ are not decisive, perhaps, as to what is a restraint of liberty, they are evidently framed in their provisions for proceedings in such cases on the idea of the existence of some actual restraint. Sec. 754 Revised Statutes says the application for the writ must set forth "in whose custody he (the petitioner) is detained, and by virtue of what claim or authority, if known;" Sec. 755, that "the writ must be directed to the person in whose custody the party is;" Sec. 757, that this person shall certify to the court or justice before whom the writ is returnable the true cause of the detention; and by Sec. 758 he is required "at the same time to bring the body of the party before the judge who granted the writ."

All these provisions contemplate a proceeding against some person who has the immemediate custody of the party detained, with the power to produce the body of such party before the court or judge, that he may be liberated if no sufficient reason is shown to the contrary.

In case of a person who is going at large, with no one controlling or watching him, or detaining him, his body cannot be produced by the person to whom the writ is directed, unless by consent of the alleged prisoner, or by his capture and forcible traduction into the presence of the court.

The record in the present case shows that no such thing was done. The Secretary denies that Wales is in his custody, and he does not produce his body; but Wales, on the direction of the Secretary, appears without any compulsion, and reports himself to the court and to Justice Cox as he did to the court-martial.

We concur with the Supreme Court of the District in the opinion that the record does not present such a case of restraint of personal liberty as to call for discharge by a writ of *habeas corpus*.

In thus deciding we are not leaving the appellant without remedy if his counsel are right in believing the court-martial has no jurisdiction of the offence of which he is charged. He can make that objection to that court before trial. He can make it before judgment after the facts are all before that court. He can make it before the reviewing tribunal.

If that court finds him guilty, and imposes imprisonment as part of a sentence, he can then have a writ to relieve him of that imprisonment. If he should be deprived of office, he can sue for his pay and have the question of the jurisdiction of the court which made such an order inquired into in that suit. If his pay is stopped in whole or in part, he can do the same thing. In all these modes he can have relief if the court is without jurisdiction, and the inquiry into that jurisdiction will be more satisfactory after the court shall have decided on the nature of the offence for which it punishes him than it can before. And this manner of relief is more in accord with the orderly administration of justice and the delicate relations of the two classes of courts, civil and military, than the assumption in advance by the one court that the other will exercise a jurisdiction which does not belong to it.

The judgment of the Supreme Court of the District of Columbia is affirmed.

Assignee Suing in the Circuit Court.

The most important recent case on the power of the Circuit Court of the United States to take cognizance of actions, or causes of action which have been assigned, is that of Farmington Village Corporation v. Pillsbury, an action brought on coupons cut from town bonds. The plaintiff claimed as assignee of these coupons, but it appeared

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that he bought them from various holders of the bonds upon these terms: he gave the holders his note non-negotiable and payable in two years, with interest, and a memoranda of agreement that if he succeeded in collecting the full amount of the coupons he would pay the assignor fifty per cent. of the net amount collected above the amount of the note.

The court, after reviewing the cases previous to the act of 1875, point out that inasmuch as that statute allowed suits to be brought by assignees of negotiable paper if necessary citizenship of the parties existed, it opened wide the door for frauds upon the jurisdiction of the court by collusive transfers between the parties made for the purpose of bringing in colorable parties and giving cognizance to the courts of the United States over controversies which had arisen between citizens of the same State. This, says the court, is a salutory provision which ought not to be neglected. It was intended to promote the ends of justice, and is equivalent to an express enactment by Congress that the circuit courts shall not have jurisdiction of suits which do not really and substantially involve a dispute or controversy of which they have cognizance, nor of suits in which the parties have been improperly or collusively made or joined for the purpose of creating a case cognizable under the act. It does not, any more than did the act of 1789, prevent the courts from taking jurisdiction of suits by an assignee when the assignment is not fictitious, and actually conveys all the interest of the assignor in the thing assigned, so that the suit when begun involves really and substantially a dispute or controversy in favor of the assignee for himself and on his own account against the defendant; but it does in positive language provide that, if the assignment is collusive and for the purpose of enabling the assignee to sue in the courts of the United States for the benefit of the assignor, when the assignor himself could not bring the action, the court shall not proceed in the case. In this respect it goes further than the rulings of the courts under the act of 1789. Under its provisions the holders of promissory notes, or of foreign or domestic bills of exchange, who are citizens of a State in which the decisions of the courts have been adverse to their interests, cannot by collusive transfers to citizens of other States create a case apparently cognizable in the courts of the United States, and have it prosecuted by their assignees in those tribunals for their benefit, in the hope of securing an adjudication in that jurisdiction more favorable to their interests. The courts of the United States were not created under the Constitution for any such purpose. Except in certain specified cases they have no jurisdiction of controversies between citizens of the same State.

In regard to the special device resorted to in this case the court say that the suit was really brought for the benefit of the owners of the bonds. They are to receive from the plaintiff one-half of the net proceeds of the case they have created by their transfer of the coupons gathered together for that purpose. The suit is their own in reality, though they have agreed that the plaintiff may retain one-half of what he collects for the use of his name and his trouble in collecting. It is true the transaction is called a purchase in the papers that were executed, and that the plaintiff gave his note for five hundred dollars, but the time for payment was put off for two years, when it was, no doubt, supposed the result of the suit would be known. No money was paid, and as the note was not negotiable, it is clear the parties intended to keep the control of the whole matter in their own hands, so that if the plaintiff failed to recover the money he could be released from his promise to pay. In the language of Mr. Justice Field, speaking for the court in Detroit v. Dean (106 U. S., 541), applied to the facts of this case, the transfer of the coupons was "a mere contrivance, pretense, the result of a collusive arrangement to create," in favor of this plaintiff, "a fictitious ground of Federal jurisdiction," so as to get a re-examination in that jurisdiction of the question decided adversely to the owners of the coupons by the highest judicial tribunal of the State. Hawes v. Oakland, 104 U. S., 459; Hayden v. Manning, 106 Id., 586; Bernards Township v. Stebbins, 109 Id., 341.—*N. Y. Daily Register.*

The Courts.

IN EQUITY.—New Suits.

May 18, 1885.

9449. Margaret F. Hallig v. Carl A. Hallig. For divorce. Com sols, Birney & Birney.

May 19, 1885.

9450. William E. Taylor v. Agnes E. Taylor. For divorce. Com sol, E. A. Newman.

9451. Robert C. Hewitt et al. v The W. U. Telegraph Co. of the Dist. of Col, et al. Injunction. Com sol, W. A Cook.

9452. Ella E. Parker v. George T. Parker. For divorce. Com sol, S. R. Bond.

May 21, 1885.

9453. John W. Condon v. Susan Condon. For divorce. Com sol, J. McD Carrington.

9454 Elizabeth M. Gulick v. Mary E. Gulick et al. For partition. Com sols, Fred W. Jones.

May 22, 1885.

9455. Elizabeth Vaughan v. Mary Corrigan et al. For release. Com sol, H. Wise Garnett.

9456. The National Bank of the Republic v Benjamin F. Bigelow et al For transfer of stock, sale, &c. Com sols, Robinson and Lillot.

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CIRCUIT COURT.—New Suits at Law.

May 12, 1885

26157. Winafred Kelly v. J. E. Divver. Appeal Defts atty, D. O'C. Callaghan.

May 13, 1885

26158. Roscoe Conkling v. George Taylor, Note, $10,020. Piffs attys, Carusi & Miller.

26159. Joseph C G. Kennedy v. F ank R. Williams et al. Note, $100. Piffs attys, Same.

26160. James R. Craighead v. George M. Robeson et al. Note, $3,000. Piffs attys, Same

26161. Watson J. Newton, ex'r, v. Marion Osborn. Judg't of Justice Hall, $99.24. Piffs attys, Newton & Berryman

26162. James G. Payne v Samuel C Pomeroy et al. Acct., $5000. Piffs attys, Taylor & Payne.

26163. Wm. H. Kemp v. John A Wetzell. Note, $153.50. Piffs attys, Abert & Warner.

26164. S. Stein & Co. v. Moses F. Eiseman. Acct, $1190 35. Piffs attys, Pairo and Leighton.

26165. Paxson Comfort & Co. v. C. J. Gawler & Co Acct., $115.36. Piffs atty, B. F. Leighton.

26166. Horace Christian v. Clayton McMichael. Replevin. Piffs atty, F. T. Browning.

26167. Edward Magruder v. Same. Replevin. Piffs atty, Same.

26168. George Creveling v. Thomas McCann. Acct., $1578.27. Piffs attys, Birney & Birney.

26169. Samuel Opydke v. Same. Acct., $222 22. Piffs attys, Same.

26170. The Anglo American Insurance Co. v. The Commissioners of the District of Columbia. Certiorari. Piffs atty, W. A. Meloy.

May 14, 1885.

26171. Charles W. Tankersly v Clayton McMichael. Replevin. Piffs atty, J. G. Bigelow.

26172. Roberl A. Philips v. Mary A. Booker et al. Judg't of Justice Helmick, $99.56.

26173. Same Judg't of Justice Helmick, $80 21.

26174. Cripti Pulmoni v. Thomas E. Snellbaker. Appeal. Piffs atty, A. G. Riddle,

May 15, 1885

26175. The U. S. v. John F. Olmstead Bond, $10 000. Piffs atty, A. S. Worthington

26176. Same v. Eliza C. Hutchinson. Bond, $10,000. Piffs atty, Same.

26177. Same v. Noah L. Jeffries. Bond, $10,000. Piffs atty, Same.

26178. Luther M. Corwall v. Foster P. Wood Judg't of Justice O'Neal, $50.72, Piffs atty, E. B. Briggs.

May 16, 1885

26179. James F. Brien v. George White. Certiorari, Defts atty, N. H. Miller.

26180. John Patch v. Jonathan Klock. Note, $178. Piffs attys, Riddle, Davis & Padgett.

26181. D. Appleton & Co. v. Norah Cleary. Replevin. Piffs atty, W. Wheeler.

May 20, 1885.

26182. Clarke & Given v. Wm. McLean & Son. Acct., $250. Piffs atty, W. F. Mattingly.

May 22, 1885.

26183. William B. Dickey v. Julius Baumgarten. Certiorari. Defts atty, J. E. McNally.

26184. Wm. H. Clagett, trustee, v Lambert T. Follansbee et al. Replevin. Piffs attys, Smith and Cruikshank

May 23, 1885.

26185. Joseph R. Hertford v. Thornton B. Richardson et al. Judg't of Justice Helmick, $28 Piffs atty, J. J. Wilmarth.

26186. Taylor & Hufty v John C. Lay. Judg't of Justice Helmick, $29.61 Piffs atty, Same.

26187. Seigmelay C. Elliot v. Postal Telegraph and Cable Co. Note, $10,000 Piffs attys, Hillyer & Ralston.

26188. George W. Armour v. The District of Columbia Damages, $30,000. Piffs attys, Carrington and Williamson.

PROBATE COURT.—Justice Hagner.

Ma 15, 1885.

Estate of Samuel B. Fisher; will filed for probate and petition of widow for letters testamentary

Estate of Sarah Swift; will filed for probate and petition of George W Bonnell for letters testamentary.

Estate of Ed. Foreman; petition of Fannie V. Baggett and Wm. J. Miller for probate of will and letters of administration.

Estate of Elizabeth M. Jones; will admitted to probate and letters testamentary granted to George T. Jones; bond $500.

Estate of Julia T. Miller; will admitted to probate and and Elizabeth A. McEvoy appointed administratrix.

Estate of Daniel Turner; Duane C. Turner appointed guardian ad litem; bond, $1,200.

Estate of Reason Gant; will admitted to probate.

Estate of Jane Rutledge; order relieving C. A. Chapman as administrator and appointing George C. Maynard administrator; bond, $2.000.

Estate of Thomas B. Medary; will admitted to probate and letters granted to Katie M Medary; bond, $5000.

Estate of Virginia Taylor; will admitted to probate and Virginia T. Lewis appointed administratrix; bond, $30,000.

May 22, 1885.

Estate of George L Larcomb; Friday, June 12 appointed for hearing.

Estate of Catharine Brown; order directing distribution.

Estate of James F. Wollard; permission granted to sell personal estate and negotiate a note

Estate of John Moore; claim of Wm. G. Johnson for counsel fees filed

Estate of David Richards; permission granted administrator to invest fund

Hanson Brown. petition of executor for rule on Jesse W. Jackson granted.

Estate of L. P. Cully; administrator granted permission to invest fund.

Estates of Mary C Young, Michael Caton, J. E. de Sibourg, and J. H. A. Newhaus; wills filed for probate,

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 20th day of May, 1885.

IDA MAY STANSBURY et al
v.
FRANK INGLEHART et al. } No 7781. Eq. Doc. 21.

On motion of the plaintiffs, by Mr. J. J. Darlington, their solicitor, it is ordered that the defendant, Annie H. Grell, cause her appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
True copy. Test: 21 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 21st day of May, 1885.

JOHN CONDON
v.
SUSAN CONDON. } Equity. No 9453.

On motion of the complainant, by Mr. Jas. McD. Carrington, his solicitor, it is ordered that the defendant, Susan Condon, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 21 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business May 18th, 1885.

In the matter of the Estate of Rollins Thorne, late of Peru in South America, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by John F Ennis.

All persons interested are hereby notified to appear in this Court on Friday, the 12th day of June next at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 21 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 18th day of May, 1885.

JOSEPH W. BABB
v.
CHRISTOPHER C. KIBBLE et al. } No. 9435. Eq. Doc. 24

On motion of the plaintiff, by Mr. Kimball, his solicitor, it is ordered that the defendant, Annie Kibble, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
True copy. Test: 17 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

THE UNITED STATES OF AMERICA
v.
SAMUEL S. SMOOT et al. } Equity. No. 4944.

Randolph Coyle, trustee herein, having reported that he has sold to Horace F. Page at and for the price of fifteen thousand four hundred and fifty dollars ($15,450.00) Lot 12 in Kidwell's subdivision of Square No. 217, it is by the court this 19th day of May, A. D. 1885, ordered that the said sale be ratified and confirmed unless cause to the contrary be shown on or before the 18th day of June, A. D. 1885 Provided, that a copy of this order be published in the Washington Law Reporter for three successive weeks prior to said last mentioned date.

A. B HAGNER.
A true copy. Test: 21 R. J. MEIGS, Clerk.

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Legal Notices.

THIS IS TO GIVE NOTICE
That the subscribers, of Washington, D. C. and Lancaster, Pa., respectively, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Rebecca Reynolds, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 16th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 16th day of May, 1885.

REBECCA REYNOLDS KRUG,
JOHN F. REED.

F. P. B. SANDS, Solicitor. 21

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of John E. Kendall, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of May, 1885

JOHN BLAKE KENDALL,

EDWARDS & BARNARD, Solicitors. 21 Executor.

THIS IS TO GIVE NOTICE:
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Sophia Bender, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of May next: they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 1st day of May, 1885.

SUSAN L. DUBANT,
902 Sixth street, N. W.
21 Administratrix

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Bell W. Deal, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of May, 1885.

21 G. H. SLAYBAUGH, Executor.

THIS IS TO GIVE NOTICE.
That the subscriber, of Washington City, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John W. Tucker, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of April, 1885.

ALBERT F. FOX,

HOSEA B. MOULTON, Solicitor. 21 Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 22d, 1885.

In the matter of the Estate of Nora Maclay, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by R. Ross Perry.

All persons interested are hereby notified to appear in this court on Friday, the 12th day of June next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 21 H. J. RAMSDELL, Register of Wills.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, the 22d day of May, 1885.

In the matter of the Estate of George Taylor, late of Washington City, District of Columbia, deceased.

The petition of Jno. St. C Brookes asking that Letters of Administration with the will annexed on the estate of the said deceased may be granted to Julian T. Burke, of Alexandria, Va., having been heretofore made to this court.

All persons interested are hereby notified to appear in this court on Friday, the 12th day of June next at 11 o'clock, a. m., to show cause why Letters of Administration with the will annexed on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to said day.

By the Court. A. B. HAGNER Justice.
A true copy Test: 21 H. J. RAMSDELL,
Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 22d, 1885.

In the matter of the Estate of Caleb Gardner, late of Newport, State of Rhode Island, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration with the will annexed on the estate of the said deceased has this day been made by William F. Gardner and Cazenove G Lee.

All persons interested are hereby notified to appear in this court on Friday the 12th day of June next at 12 o'clock, m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration with the will annexed on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 21 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 22d, 1885.

In the case of Henry L. Rose and Benjamin F. Larcombe, Administrators of George H Larcombe, deceased, the administrators aforesaid have, with the approval of the court, appointed Friday, the 12th day of June, A. D. 1885, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Administrators will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 11 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

THE NATIONAL UNION INSURANCE CO. v. JOHN B. TYLER ET AL. } No. 8664. Eq. Doc. 28

The trustee in this case, John C. Heald, having reported to the court that he has sold sub lots six (6), seven (7), eight (8), nine (9), ten (10) and eleven (11) and part of original lot one (1) in square numbered six hundred and thirty (630) to Andrew Wylie, for six thousand eight hundred and sixteen 38-100 dollars ($6,816 38). It is, this 22d day of May, 1885, ordered, that said sale shall be finally ratified unless cause to the contrary be shown on or before the 22d day of June, 1885. Provided, a copy of this order be published, in the meantime, once a week for three successive weeks in the Washington Law Reporter and the Evening Star.

A B HAGNER.
A true copy. 21 Test: R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE,
That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Julia T. Miller, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of May, 1885.

ELIZABETH A. McEVOY,

WM. J. MILLER, Solicitor. 21 Executrix.

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Legal Notices.

THIS IS TO GIVE NOTICE
That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Mary Jane Martin, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of May next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 9th day of May, 1885.
ELIZA E. THORN,
A. B. DUVALL, Solicitor 21 Administratrix.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, May 22d, 1885.
In the matter of the Estate of Charles R Clifton, late of the District of Columbia, deceased
Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Katie Clifton.
All persons interested are hereby notified to appear in this court on Friday, the 12th day of June next at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. A. B. HAGNER, Justice.
Test; 21 H. J. RAMSDELL. Register of Wills.
O. T. THOMPSON, Solicitor

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Sarah Swift, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 19th day of May next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 19th day of May, 1885.
GEORGE W. BONNELL,
WM T. BALEY, Solicitor 21 Executor

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of William Henry Harrison, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 27th day of April, 1885.
JEROME A. JOHNSON,
20 Executor

THIS IS TO GIVE NOTICE,
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administratian on the personal estate of John Walker Maury, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of May next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 14th day of May, 1885.
C. B. MAURY,
WM. A. MAURY, Solicitor. 20 Administrator.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of William A. Webster, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of May next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 13th day of May, 1885.
CATHARINE. WEBSTER,
E. H THOMAS, Solicitor 20 Executrix.

Legal Notices.

THIS IS TO GIVE NOTICE,
That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Laura O. Taylor, late of the District of Columbia deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 30th day of April, 1885.
GEORGANNA C. BIRD,
O. T. THOMPSON, Solicitor. 20 Executrix.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Elizabeth Margaret Jones, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of May next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 15th day of May, 1885.
20 GEO. T. JONES, Executor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 15, 1885.
In the matter of the Estate of Edward Foreman, deceased late of City of Washington, District of Columbia.
Application to take proof whether certain written papers filed in the matter of the estate of said Edward Foreman, should be admitted as the last Will and Testament of said Edward Foreman, and for Letters of Administratron on the estate of the said deceased, has this day been made by Fannie V. Baggett and William J Miller.
All persons interested are hereby notified to appear in this court on Friday the 12th day of June next at 10 o'clock, a. m., to show cause why the said paper writings should not be proved and admitted to Probate as the last Will and Testament of said Edward Foreman, and Letters of Administration or letters of administration with will annexed on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter and The Evening Star, previous to the said day.
By the Court. A. B. HAGNER, Justice.
Test: H. J. RAMSDELL,
Register of Wills for the District of Columbia.
CARUSI & MILLER, Solicitors 20

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Holding a Special Term for Orphans Court Business. May 11th, 1885.
In the matter of the estate of John Carter Ramsden, late of Gisthorpe, Parish of Filey, County of York. England, deceased.
Application for Letters of Administration on the estate of the said deceased has this day been made by Samuel Webb Parker and Henry Blackman in favor of Henry C, Hazard.
All persons interested are hereby notified to appear in this court on Friday, the fifth day of June next at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. A. B. HAGNER, Justice.
Test: 20 H. J. RAMSDELL, Register of Wills.
R. D. MUSSEY, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 14th day of May, 1885.
MAGGIE E. PAYNE v. THOMAS J. PAYNE. } No. 9237.
A bill for divorce on the ground of desertion.
On motion of the plaintiff by Mr. Frank T. Browning, her solicitor, it is ordered that the defendant Thomas J. Payne, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.
By the Court. A. B. HAGNER, Justice
True copy. Test: 20 R. J. MEIGS, Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 4th day of May, 1885.

MARTHA L. CATTIN
v. } No. 9423.
BERTRAM E. CATTIN.

Application for divorce on the ground of desertion.

On motion of the plaintiff, by Mr. J. T. Power, her solicitor, it is ordered that the defendant, Bertram E Cattin, cause his appearance to be entered herein on or before the first rule-day, occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B HAGNER, Justice.
True Copy Test 19 R. J MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 4th day of May, 1885.

HUGH DONOHO
v. } No. 9422. Eq. Doc. 24.
JAMES BYRNES et al

On motion of the plaintiff, by Messrs. Hanna & Johnston, his solicitors, is it ordered that the defendants, Wilmer S. Shepherd and James Byrnes, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 19 R J. MEIGS. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 6th day of May, 1885.

HENRY FETTER
v. } No. 9340. Equity.
THOMAS J. LOGAN et al.

On motion of the plaintiff, by Mr. Saville, his solicitor, it is ordered that the defendant, Frederick S. Bletz, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 19 R. J. MEIGS. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 9th day of May, 1885.

SARAH E. CHASE
v } No. 9409. Equity.
DENNIS TIERNEY et al.

On motion of the plaintiff, by Mr Duhamel, her solicitor, it is ordered that the defendant Mathilda Kaufman, cause her appearance to be entered herein on or before the first rule day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B HAGNER, Justice.
True copy. Test: 19 R. J MEIGS. Clerk

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 8, 1885.

In the matter of the Estate of Thomas I. Middleton, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Elizabeth Middleton, widow, who prays that Benjamin F. Leighton may be appointed Administrator.

All persons interested are hereby notified to appear in this court on Friday the 29th day of May next, at 11 o'clock, a. m., to show cause why Letters of Administration to said Benjamin F. Leighton, on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 19 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court. Business. May 1st, 1885.

In the matter of the Will of Peter Monaghan, late of the District of Columbia, deceased

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by Thomas Geary.

All persons interested are hereby notified to appear in this court on Friday the fifth day of June next at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B. HAGNER. Justice.
Test: 19 H J. RAMSDELL, Register of Wills.
JOHN E. MCNALLY, Solicitor.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 8th, 1885.

In the matter of the Estate of Adolphus H. Pickrell, late of the District of Columbia, deceased.

Application for Letters de bonis non c. t. a. on the Estate of the said deceased, has this day been made by The Farmers & Mechanics' National Bank of Georgetown, D C.

All persons interested are hereby notified to appear in this court on Friday, the 29th day of May, 1885, at 11 o'clock m., to show cause why Letters de bonis non c t a. on the estate of said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court A. B. HAGNER, Justice.
Test: 19 H. J. RAMSDELL, Register of Wills.
CHAS M. MATTHEWS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 8th, 1885

In the matter of the Estate of James Kennedy, late of the District of Columbia, deceased.

Application for Letters of Administration d b.n. on the Estate of the said deceased, has this day been made by Elizabeth H. Du Hamel.

All persons interested are hereby notified to appear in this court on Friday the 29th day of May next at 11 o'clock, a. m., to show cause why Letters of Administration d b.n. on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test 19 H. J RAMSDELL, Register of Wills.
HENKLE & DU HAMEL, Solicitors

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business. May 8th, 1885

In the case of Margaret Sioussa, Executrix of Charles Sioussa, deceased, the Executrix aforesaid has, with the approval of the court, appointed Friday, the 5th day of June A. D. 1885, at 11 o'clock, a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executrix will take the benefit of the law against them Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 19 H. J. RAMSDELL, Register of Wills.
GEO. E. HAMILTON, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Holding a Special Term for Orphans' Court Business. May 4th, 1885.

In the case of Henry Polkinhorn, Administrator of H. Russel Taylor, dec'd, the Administrator aforesaid has, with the approval of the Court, appointed Friday the 29th day of May, A. D 1885, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test 19 H. J RAMSDELL, Register of Wills.
JESSE B. WILSON, Solicitor

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, this 1st day of May, 1885.

JAMES B. HOUSTON
v. } In Equity. No. 8982.
MARY T. GARLAND ET AL.

Ordered this 1st day of May, 1885, that the offer of Dwight J. Partello, to purchase at private sale the west 24.70 feet by depth of lot seven in square one twenty-one and improvements, as reported by the trustees herein, be, and the same is, hereby accepted and the said sale is hereby ratified and confirmed unless cause to the contrary be shown on or before June 2nd, 1885. Provided a copy of this order be published once a week for three successive weeks prior to said day in the Washington Law Reporter

The report states the amount of sales at $5,500.

By the Court. A. B HAGNER, Justice.
True copy. Test: 18 R. J. MEIGS, Clerk.

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Legal Notices.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Sarah C. Johnson, late of the District of Columbia, deceased
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 24th day of April, 1885.
REBECCA J. ADAMS,
WM. H. DENNIS, Solicitor. 19 Executrix.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Wm. Whisler, late of the U. S. Army, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 8th day of May next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 8th day of May, 1885.
A. W. GREELY,
U. S Army,
19 Signal Office.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Thomas J. Irwin, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 20th day of April, 1885.
SUSAN IRWIN,
JOHN E. MCNALLY, Solicitory. 19 Administratrix.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Samuel Queen, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 1st day of May next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 1st day of May, 1885
ANN W. QUEEN,
R. P. JACKSON, Solicitor. 19 Executrix

THIS IS TO GIVE NOTICE.
That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of John Beck, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscribers on or before the 24th day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under out hands this 24th day of April, 1885.
CHRISTIAN RUPPERT,
JOHN L. VOGT,
HANNA & JOHNSTON, Solicitors 19 Executors

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of Jenkin Thomas, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 18th day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 18th day of April, 1885.
WM. RILEY DEEBLE.
GORDON & GORDON, Solicitors. 19 Administrator c.t a.

Legal Notices.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Anton Heitmuller, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 24th day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 24th day of April, 1885.
HENRIETTA HEITMULLR.
GEO F. APPLEBY, Solicitor. 19 Executrix.

THIS IS TO GIVE NOTICE.
That the subscriber, of Baltimore Co., Md., hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary ancilliary on the personal estate of Francis Drummond, late of Baltimore County, Md., deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 5th day of May next; they may otherwise by law be excluded from all benefit of the said estate,
Given under my hand this 5th day of May, 1885.
BORGIA FARRELL.
IRVING WILLIAMSON, Solicitor. 19 Executrix.

THIS IS TO GIVE NOTICE.
That the subscribers of the District of Columbia hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Patrick Cullinane, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscribers on or before the 1st day of May next; they may otherwise by law be excluded from all benefit of the said estate.
Given under our hands this 1st day of May, 1885.
E D DONNELLY,
JOHN F. CULLINANE.
HINE & THOMAS, Solicitors. 19 Executors.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of Daniel Justus O'Connor, late of the District of Columbia, deceased.
All persons having claims again the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 25th day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 25th day of April, 1885.
19 CHARLES C DUNCANSON.
C. A. WALTER, Solicitor 19 Administrator c t a.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.
JOHN LANG
v. } In equity. No. 9356.
MARGARET LANG et al.
This cause came on to be heard on the report of the trustee that he had sold all that piece or parcel of land and premises mentioned in the proceedings and described as follows: Beginning at a point on the west line of the seventh street plank road, twelve perches from the intersection of said west line with Taylor's Lane road, said point being the northeast corner of J. C Lewis' lot, running thence north 89°, west, 14 05 perches; thence north 2¾°, west, 8 02 perches; thence south 89°, east 14.05 perches, to the intersection with said west line of Seventh Street road; thence with said line of said road south 2¾°, east 8 02 perches, to the place of beginning, together with the improvements thereon, to Andreas Loffler, for (3,650) three thousand six hundred and fifty dollars; that the said purchaser has complied with the terms of sale, and that the said sale was fair and bona fide. And on motion of counsel, whereupon it is, this fourth day of May, by the court adjudged and ordered that the said sale be, and the same is, hereby ratified unless cause be shown to the contrary on or before the 4th day of June, A. D. 1885. Provided that a copy of this order be published once a week for each of three successive weeks in the Washington Law Reporter before that date
A. B. HAGNER.
A true copy. Test: 19 R. J. MEIGS, Clerk.
D. W. GLASSIE, Solicitor.

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Washington Law Reporter

WASHINGTON - - - - - - - - May 30, 1885.

GEORGE B. CORKHILL - - - EDITOR

Business of the U. S. Supreme Court.

The following is a summary statement of the business of the Supreme Court of the United States for the October Term, 1884, which closed on May 4th:

Number of cases on the docket at the close of the October 1883, not disposed of, 845; docketed during October Term, 1884, 470; total, 1,315.

Number of cases disposed of at the term just closed, 464; remaining undisposed of, 851; total, 1,315.

Number of cases continued under advisement from October Term, 1883, 10; argued orally, 196; submitted, 119; continued, 16; passed, 8; total, 349.

Number of cases affirmed, 199; reversed, 97; dismissed, 39; docketed and dismissed, 27; questions answered, 2; settled and dismissed, etc., by the parties, 85; dismissed in vacation (under the 20th rule), 15; total, 446.

Number of Opinions delivered, 292.

WE have received a copy of an article by Theodore Deecke, entitled "Primaere and Originaere Venuecktheit," which is a historical sketch of the subject with critical remarks. It also appears in the *American Journal of Insanity* for April, 1885. It is a learned review of the subject, and will fully repay the most carctive perusal. We presume that copies can be had from the publishers of that journal—Messrs. JOHN WILEY & SON, Astor Place, New York.

IT is said that one of our learned judges, while addressing a graduating class in medicine recently, in drawing distinctions between lawyers and doctors, remarked that one important difference was this: that when a lawyer loses his case, it *goes up;* but when a doctor loses his, it *goes down.* This is almost too true.

THE SUPREME COURT OF MINNESOTA, in the case of Wagner v. Nagel, May 8, 1885, 23 N. W. Rep., 309, held, that "evidence that a wife living with her husband employed a servant for ordinary domestic service in their family, is competent evidence against the husband in an action for such services. It is not necessary to show any express authority from the husband to make the contract. This is within the personal authority of the wife, and in employing such service she is presumed to be acting for the husband. The common law rule in regard to the presumed authority of the wife in such matters is not changed by our statutes relating to the rights and liabilities of married women. Flynn v. Messenger, 28 Minn., 208; S. C., 48 Am. Rep., 279." The following cases are also in point: Tiemyer v. Turnquist, 85 N. Y., 516; S. C., 39 Am. Rep., 674; Krouskop v. Shoutz, 51 Wis., 204; S. C., 37 Am. Rep., 817.

RECENTLY a judge, being about to impose sentence upon a prisoner, who had been convicted of housebreaking, called him up for that purpose; whereupon his counsel, addressing the court, asked that a light sentence be imposed. The court proceeded to sentence the prisoner to ten years in the penitentiary. His counsel appealed pathetically to the court laying great stress upon the prisoner's feeble condition. "Your honor," said the counsel, "my client is now in the last stages of consumption. He will never live to serve half sentence, and I hope your honor will be merciful to him." "Well," said the court, "I will do better. I sentence the prisoner to the penitentiary, at hard labor, *for life.*"

HON. A. L. GORDON, one of Pennsylvania's most able and gifted advocates, died recently at Philadelphia, where he had gone for the purpose of having an operation performed.

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Supreme Court District of Columbia

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY

SOLOMON P. GIDDINGS *vs.* JOSIAH H. SQUIER.

LAW. No. 25,362.

Decided May , 1885.
The CHIEF JUSTICE and Justices WYLIE and JAMES sitting.

Where property has been attached under a writ of attachment regularly issued on the ground that the defendant evades the service of ordinary process, judgment of condemnation should be rendered, although it appear that service of process was afterwards obtained on the same day, unless the defendant obtain an order quashing the writ, or supersede it with surety as provided by the statute (R. S. D. C., §§782–786.)

STATEMENT OF THE CASE.

This was a suit at law to recover $4,285 instituted on the 9th of June, 1884.

The plaintiff filed his declaration, and at the same time affidavits of himself and a witness proving the debt, and averring "that the defendant evades the service of ordinary process by concealing himself," together with the usual undertaking to make good all costs, etc., whereupon a writ of attachment was issued, which was served on the same day. Later, on the same day, the summons was served on the defendant in person.

More than twenty days having elapsed, and no plea having been filed, motion was made for judgment of condemnation of the property attached. The court below refused this motion, upon the ground that it appeared from the marshal's return of personal service of process, that, in point of fact, the defendant was *not* evading the service of process, but directed a judgment by default for the amount claimed in the declaration with costs.

The plaintiff appealed from so much of the judgment as overruled the motion for a judgment of condemnation.

FRED. W. JONES, for plaintiff, cited Rev. Stats., §§ 782, 783, 784, 785 and 786, also 16th rule of court.

The proceeding being *in rem.* with defendant in default, he was not represented.

Mr. Chief Justice CARTTER delivered the opinion of the court.

I have to express the opinion of the court in the case of Giddings against Squier. The record sets forth an application to the clerk for an attachment, the filing of a bill of particulars amounting to $4,285, an affidavit that the defendant evades ordinary process by concealing himself, proof of the indebtedness and how it arose by the testimony of George W. Stickney, an undertaking by the attaching creditor as provided by the statute, approved by the clerk, and the marshal's return of the writ of attachment as follows:

"I, Clayton McMichael, U. S. Marshal for the District of Columbia, do hereby certify that I have this 9th day of June, A. D. 1884, attached all the defendant's right, title, interest and estate in and to the following described property in the city of Washington, to wit: In square 199, lot A, north part, beginning at N. W. corner; south, 98 ft. 1 in.; east, 29 ft.; north, 7 ft. 7 in.; west, 2 ft.; north, 90 ft. 6 in.; west along K street, 27 ft., together with improvements thereon.

"CLAYTON MCMICHAEL,
"*U. S. Marshal.*"

Personal service was also had.

"Served copies of the declaration, notice to plead, affidavit, and this summons on the defendant the 9th day of June, 1884.

"CLAYTON MCMICHAEL,
"*Marshal.*"

July 14, plaintiff moved for a judgment of condemnation of the property attached by the marshal, which was overruled and judgment by default given for the amount claimed in the declaration. An appeal was taken from the judgment overruling the motion for condemnation.

The record in this case exhibits a proceeding in attachment accurately conforming to the requisites of the law. A motion for condemnation of the property under the attachment was made and denied, and a judgment rendered *in personam* against the defendant, and the case stands there. There was no motion to quash the attachment. There was no substitution of security to relieve the property and stand in its stead, nor was there any other interference of any sort by the defendant. So that the case raises simply the question

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whether a judgment of condemnation of property, where personal service may have afterwards been made, can be rendered.

The old idea of this process was evidently predominant with the court below. Then, attachment was merely a process for the purpose of securing the presence of the defendant, and, upon his appearance, it was discharged, and the matter was resolved into a proceeding *in personam.*

There was another view, perhaps, taken of it which is suggested by a possible circumstance, and that is, that there is an incongruity in service of process upon a debtor's property by attachment for the reason that he cannot be found and is evading process, and on the same day a personal service upon him. There is an apparent incompatibility in that state of facts; and if one hour did not follow another, if noon did not follow the morning, and night the noon, and if the man could not be found between extremes in a service of an attachment transpiring in the early part of the day and personal service in the after part of the day, it would be irreconcilable. But such a thing is quite possible, and, more than that, it frequently occurs. It very often happens that the man who cannot be found just before the service of an attachment is very oppressive in his presence just afterwards.

But what does the statute mean? These are to be found embodied in sections 782 to 786 of the Revised Statutes of the District. After providing the terms under which the attachment may issue, it says:

"SEC. 783. "If the defendant, his agent or attorney, shall file an affidavit traversing the plaintiff's affidavit (that is the preliminary affidavit) the court shall determine whether the facts set forth in plaintiff's affidavit are true, and whether there were just ground for issuing the writ of attachment; and if the facts do not sustain the affidavit, the court shall quash the writ of attachment or garnishment, and this issue may be tried by a judge at chambers on three days' notice."

If the attachment is quashed at this the end of the proceeding. But there was no motion to quash in this case. There was no controversy about the facts. The proof was, that the defendant was evading process, and there was no proof to the contrary.

The statute continues:

"SEC. 784: The thing attached shall not be discharged from the custody of the officer seizing it until the defendant shall deliver, either to the officer or to the clerk to be filed in the cause, his undertaking with sufficient surety to satisfy and pay the final judgment of the court against him."

No surety was given, none tendered, and here is the mandate of the statute directing the court that they shall not discharge the property without it. The writ is good, the proceeding is regular and according to law. What is next to be done under these circumstances?

The next section—sec. 785—provides:

"If the defendant fail to execute such dertaking, the court may sell the thing attached; whenever it is satisfied that it is in the interest of the parties, it should be sold before final judgment."

So that if the attachment is not quashed, if no substitutional surety is given, the court is to sell it in the interests of the parties.

The court below refused to enter a judgment of condemnation of the property, although there was no motion made to quash the attachment or to supersede it with surety. The condemnation was probably refused under the presumption that the defendant was served with personal process before the service of the attachment. But that is not a presumption to be entertained at all; it is a matter of proof, or would have been on a motion to quash the attachment.

We think that the property was subject to condemnation, and that the court ought to have entered such a judgment and have directed a sale of the property in the interests of the parties.

Judgment will be entered here as the court below ought to have rendered, condemning the property and awarding execution.

"PA, who was Shylock?" Paterfamilias, "Great goodness, boy! you attend Sunday school every week and don't know who Shylock was? Go and read your Bible, sir.

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United States Supreme Court.

No. 201 —OCTOBER TERM, 1884.

SILAS S. HUNTLEY

vs.

THOMAS S. HUNTLEY, Executor of Charles C. Huntley, dec'd, and Bradley Barlow.

Appeal from the Supreme Court of the District of Columbia.

C. bought an undivided one-third interest in a stage company, intending that S. should have one-half of the one-third, and before the purchase informed S. of such intention. At the time there was an unsettled account between C. and S., in respect of services rendered by S. to C., and of certain business in which they were both interested. After the purchase, C. agreed verbally with S., that S. should have the one-sixth at the price S. had paid for it., any amount due by C. to S. to be applied towards payment for the one-sixth, the ownership of it by S. to commence at once. Afterwards, the four owners of the property, of whom S. and C. were two, executed a paper, under seal, in which the interests of the four were defined, S. and C. being stated to be the owners of one-third; and all, including C., thereafter recognized S. as owning one-sixth, subject, as between S. and C.. to the liability of S. to reimburse C, what he had paid for such one-sixth: *Held*,

(1.) The contract was executed, and S. was put in possession, and the Statute of Frauds, (29 Car. 2. c. 3, sec. 17) did not apply.

(2.) S. was entitled to have credit, on his purchase of the one-sixth, for what C. owed him on the accounts aforesaid; and C. was entitled to recover from S. the residue of what he had paid for the one-sixth.

Mr. Justice HARLAN delivered the opinion of the court.

For several years prior to June 27, 1874, the appellee, Charles C. Huntley, was engaged on numerous routes in the west and northwest in the business of transporting the mails of the United States and passengers. On one of those routes S. S. Huntley was interested with him, while on others he was his general manager and agent, with unrestricted authority to conduct the business as, in his judgment, was best for his principal. Among the companies in which C. C. Huntley had an interest were the Northwest Stage Company —engaged in transporting mails and passengers on routes in the State of Oregon, and in the Territories of Utah, Idaho and Washington—and the Oregon and California Stage Company, which was engaged in like business on the route from Oraville, California, to Portland, Oregon. In the former company, Bradley Barlow and James W. Parker each had an undivided interest of one-third, while C. C. Huntley and Adam E. Smith had each an undivided interest of one-sixth; in the latter, Barlow, C. C. Huntley, Parker and one Sanderson had each an undivided interest of one-fourth.

On the 27th day of June, 1874, Parker, by bill of sale, transferred to C. C. Huntley his interest in the property and assets of both those companies. The consideration paid was $75,000, for which the vendee executed his several promissory notes to Barlow, who endorsed them to Parker.

On the 22d day of December, 1874, the following instrument of writing was executed by the parties thereto:

"Know all men by these presents, that whereas Bradley Barlow is the owner of one-half of the stock, property and effects of what was known as the Northwest Stage Company, and S. S. and C. C. Huntley are the owners of one-third of said property, and Adam E. Smith is the owner of one-sixth of said property, and each of the said parties share respectively in the above proportions in all the mail routes lately operated by said company, and are to share in the future on all those routes in the above proportions in the ownership, profits, losses and expenses appertaining thereto or incident to the obtaining said mail routes, and it is agreed between us that the said Barlow shall have full power and authority to collect the pay on said routes during the present contract term for the benefit of the said parties herein named in the proportions to each party hereinbefore stated, and that full powers of attorney in all cases shall be made and delivered to the said Barlow to collect all mail pay on all routes now owned or hereinafter acquired by the aforesaid parties, or either of them, in the territory embraced by the service of the late Northwest Stage Company.

"In witness whereof, we have hereunto set our hands and seals, this 22d day of December, A. D. 1874.

"BRADLEY BARLOW. [SEAL.]
"C. C. HUNTLEY. [SEAL.]
"S. S. HUNTLEY. [SEAL.]
"ADAM E. SMITH. [SEAL.]

"In the presence of—
"J. L. SANDERSON."

Shortly after the execution of that paper, C. C. Huntley, for $30,000, sold to Barlow one-half of the interest in the Northwest Stage Company which the former had purchased from Parker.

The present suit was instituted by S. S. Huntley on the 14th day of December, 1878, against C. C. Huntley, Barlow and Smith. The bill alleges, among other things, that plaintiff and defendants were the owners of the stock, property and effects of the North-

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west Stage Company, and that their respective interests are distinctly set forth and agreed upon in the before-mentioned writing of December 22, 1874; that Barlow had purchased Smith's interest, and, under the authority given him, had collected all the mail pay earned by the company for its contract term ending June 30, 1878, but had not made a final settlement, in respect of such collections, with those interested with him; that he had, also, sold the property of the company for $75,000, but had not fully accounted therefor; that C. C. Huntley denied that plaintiff had any interest in that property or in its proceeds, and, unless restrained, would collect and appropriate to his own use all the proceeds and profits arising from the one-third interest which originally stood in the name of C. C. and S. S. Huntley, one-half of which, that is, one-sixth of the entire property, belonged to plaintiff. The prayer of the bill was for an ascertainment of the amount in Barlow's hands, in respect of the said one-sixth interest, and that plaintiff have a decree for such sums as may be justly due him.

C. C. Huntley, in his answer, denies that plaintiff ever acquired any interest in the purchase from Parker, or that the paper of December 22, 1874, of the signing of which he had no recollection, was intended to be anything more than a declaration or admission of the parties that Barlow was authorized to receive the money that might become due to the company from time to time. He says: "I did not in said in paper writing intend to admit, nor have I ever admitted, nor do I now admit, but, on the contrary, deny that the said plaintiff was, or is, or was to be, an equal owner with me in the said on-third interest in said Northwest Stage Company, its property, profits, assets, etc., except in the event of the repayment to me of the said sum of $45,000, so expended in the purchase of said shares as aforesaid, with interest thereon; and, although no agreement to that effect was ever entered into, I have always been, and am now, willing that the said plaintiff shall have all the profit that has been made or derived in respect of one-sixth interest in said Northwest Stage Company, and said one-fourth interest in said Oregon and California Stage Company, since the 1st day of July, 1874; provided there be first repaid to me the said cost price of said purchase, to wit, the said sum of $45,000, with interest from June 27, 1874."

By the decree of the court below, in special term, it was adjudged that plaintiff recover of the defendant Barlow one-sixth of the property and money in his hands of the Northwest Stage Company, and the latter was enjoined from paying to C. C. Huntley any part thereof. The cause was referred to an auditor to ascertain the amount of plaintiff's interest, and to state all proper and necessary accounts. Upon appeal to the general term that decree was reversed with costs.

While there is some conflict in the testimony as to the circumstances attending the purchase by C. C. Huntley of Parker's interest in these companies, we are of opinion upon a careful examination of the evidence:

1. That the purchase by C. C. Huntley was pursuant to an understanding between him and Barlow, that the latter should have one-half of the Parker interest in the Northwest Stage Company, and with the purpose, on the part of C. C. Huntley, that S. S. Huntley should have the other half;

2. That before such purchase, S. S. Huntley was informed by C. C. Huntley of the latter's intention to let him have one-half of that interest;

3. That at the time of such purchase, there was an unsettled account between C. C. Huntley and S. S. Huntley in respect as well of services rendered by the latter as agent and general manager for the former, as of mail contracts and business in which they were jointly interested, other than those relating to routes not occupied by the Northwest Stage Company or other companies with which Barlow was connected;

4. That C. C. Huntley, in execution of his avowed purposes with reference to S. S. Huntley, verbally agreed with the latter, while they were together in the west in the summer or fall of 1874, after the purchase from Parker, that he should have one-half of the original Parker interest in the two companies—that is, the remaining one-sixth interest in the Northwest Stage Company, and one-eighth interest in the other company—at the price which C. C. Huntley had paid for them; the amount, if any, due to S. S. Huntley, on account of the before-mentioned services and contracts, to be applied in payment as far as it would go for the interests so transferred to him;

5. That the ownership of those interests by S. S. Huntley was not to be deferred until a settlement of accounts between him and C. C. Huntley was had, but it was to take effect as of July 1, 1874, when the new contract term of those companies commenced;

6. That the writing of December 22, 1874, was executed because of the then contemplated absence of C. C. Huntley in Europe for the benefit of his health, and to show the

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interest which S. S. Huntley had previously acquired, and then, under the agreement with C. C. Huntley, actually had in the property and business of the Northwest Stage Company;

7. That, thereafter, all parties concerned in the affairs of that company, including C. C. Huntley, recognized and treated S. S. Huntley, as the owner of one-sixth interest in its property and assets, subject, however, so far as C. C. Huntley was concerned, to the liability of S. S. Huntley to reimburse him for the amount which that interest had cost.

In behalf of the appellee Huntley, it is contended that the verbal agreement, upon which appellant relies as the foundation for his claim, is void under the 17th section of the statute of 29 Car. II, c. 3, which is in force in the District of Columbia, and which provides that "No contract for the sale of any goods, wares, and merchandise for the price of ten pounds sterling or upward, shall be allowed to be good, except the buyer shall accept part of the goods sold, and actually receive the same, or give something in earnest to bind the bargain, or in part payment, or that some note or memorandum, in writing, of said bargain be made and signed by the parties to be charged by such contract, or their agents, thereunto lawfully authorized." Kelty's Eng. Stats., 242, Thompson's Digest, 221.)

The argument in support of this proposition is: That the Northwest Stage Company was a species of partnership with joint stock divided into transferable shares, which could be disposed of by the owner without the consent of his partners; that such shares were substantially like stock in corporations or regular joint-stock companies; and that the alleged verbal sale of an interest in that company was void under the foregoing statute, because, as is claimed, the words "goods, wares, and merchandise," as therein used, properly embrace not merely palpable personal property, having an intrinsic value, but also stocks in chartered corporations, shares or interests in joint-stock companies, or private partnerships having the incidents of such companies, notes, checks, bonds, and other evidences of value.

Without determining whether this statute governs the rights of the parties, or whether this interpretation of its provisions is sustained by the weight of authority, or whether the writing of December 22, 1874, is not itself a sufficient memorandum in writing of the sale in question, it is enough to say that the contract between C. C. Huntley and S. S. Huntley was so far executed that the rights and obligations of the parties cannot be affected by the statute. To the extent that it was possible or necessary in respect of property of this character, the vendee was placed in possession of that which he purchased. This is shown by the evidence of several witnesses, and is establiseed by the paper of December 22, 1874, which declares that S. S. and C. C. Huntley *are* the *owners* of one-third of the stock, property, and effects of the Northwest Stage Company, and, as such and to that extent, *are to share* in all the mail routes then lately operated by that company, and *to share, in the future*, in the profits, losses, and expenses appertaining thereto. There is some evidence tending to show that when this paper was executed C. C. Huntley was in poor health, but it falls short of proving that he was incapable, in law, of becoming a party to such an instrument. Nor does his answer assert any such incapacity as a ground of defence. Besides, that writing is in accordance with the understanding reached between him and S. S. Huntley prior to its execution.

The decrees, in general and in special term, are, in our judgment, erroneous; the former, because it denied all relief to the plaintiff; and the latter, because it proceeded upon the ground that the evidence showed that S. S. Huntley had fully paid for the interest sold and transferred to him by C. C. Huntley. The case should go to an auditor to ascertain the amount fairly and justly due S. S. Huntley from C. C. Huntley at the time of his purchase from C. C. Huntley—such amount to be applied in payment of S. S. Huntley's indebtedness to C. C. Huntley, on account of the purchase from the latter of one-half of the Parker interest in the Northwest Stage Company. And if C. C. Huntley was not indebted to S. S. Huntley at that date, then the former will be entitled to be reimbursed out of the funds in the hands of Barlow, for all that he paid for the one-sixth part sold to S. S. Huntley, with interest thereon from the time of the purchase from Parker; the balance, if any, to go to S. S. Huntley. Such further decree should be rendered after the report of the auditor as the facts thus disclosed will justify or require.

The decree below is reversed, with direction for such proceedings as will be consistent with this opinion.

It is not essential that a decree sustaining a patent be shown to authorize the granting of a preliminary injunction. [Foster v. Crossin, C. C., R. I., April 6, 1885.]

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Appellate Court Third District of Illinois.

CITY OF BLOOMINGTON *vs.* LAURA ANNETT.

Action by Wife for Injury: What Damages Recoverable.—In an action by a wife for personal injuries, where she is living with her husband, and supported by him, and it is not shown that she is possessed of separate property or engaged in the prosecution of a separate, independent business, she cannot recover for the loss of time caused by the injury, nor for money expended in procuring medical attendance. The court is of opinion that under our statute, separate actions would be necessary for the recovery of the entire damages, one for those sustained by the husband and one for those sustained by the wife.

Notice of Defective Sidewalk.—Where it was proved that the sidewalk in question was on one of the public traveled streets of the city, not over a block from the court house, and had been in a dangerous condition for at least two weeks before the accident occurred: *Held*, That this brings the case within the rule that the corporate authorities knew or could have known by the exercise of reasonable diligence, the unsafe condition of the walk in time to have remedied the defect before the accident.

Appeal from the Circuit Court of McLean county, the Hon. O. T. REEVES, Judge, presiding. Opinion filed January 16, 1885.

Appellee that the city had not built the platform and was not bound to use more than ordinary diligence to discover it, cited City of Chicago v. Starr, 42 Ill., 174; Severn v. Eddy, 52 Ill., 189; City of Chicago v. Murphy, 84 Ill., 224.

The husband is the only one entitled to sue for the items named: Tuttle v. C., R. & P. R. R. Co., 42 Iowa, 518; Thomas v. Town of Brooklyn, 58 Iowa, 438; Messe v. City of Fond du Lac, 48 Wis., 323; Candy v. Coppock, 85 Ind., 594; Freeman v. Holmes, 62 Ga., 556; Spann v. Mercer, 8 Neb., 357; Syme v. Riddle, 88 N. C., 463; Stevens v. Morris, 37 Ohio, 10; Hazelbaker v. Goodfellow, 64 Ill., 238; Cunningham v. Haney, 12 Bradwell, 437; Flynn v. Gardner, 3 Bradwell, 253.

Appellee, as to notice, cited: City of Sterling v. Thomas, 60 Ill., 264; City of Chicago v. Fowler, 60 Ill., 323; Springfield v. Doyle, 76 Ill., 202; C. & I. R. R. Co. v. Russell, 91 Ill., 302; City of Aurora v. Dale, 90 Ill., 46; City of Aurora v. Hilman, 90 Ill., 61; City of Gilman v. Haley, 7 Bradwell, 349.

The recovery for loss of time can only be by appellee; Partridge v. Amond, 73 Ill., 600; Hare v. Pointer, 77 Ill., 543; Haight v. McVeagh, 69 Ill., 624.

DAVIS, P. J.: This action was brought by appellee to recover damages from the city of Bloomington, for injuries sustained by her from a fall upon a defective sidewalk.

Appellee fell through a defective covering over a cellar way on Madison street. The sidewalk in front of the building was twelve feet wide. The cellar way, over which the alleged defective covering was placed, extended from the building into the sidewalk about three and one-half feet and was about five feet ten inches in width. Substantial iron railings two and one-half feet high were on the north and south sides of the stairway, and extended eastward to the top of the stairway. Between each rail and the edge of the opening of the stairway was a distance of about six inches. The manager of the store in front of which the accident occurred, about two weeks before the alleged injury had a platform built over the stairway, on which to put goods for display. During the daytime it was completely covered with goods which were at night taken inside and the platform usually removed. The platform was made of two large box ends or coverings, each about three feet square. The east ends rested on the sidewalk at the head of the stairway, the north and south sides on the space inside the railings, and the west ends, where they met in the middle of the stairway, rested upon a box about a foot square on the end, placed upright on the third step from the top of the stairs. These coverings lacked six or eight inches of extending westward to a line perpendicular to the face of the building. From the sill of the window, which was directly over and about three feet higher than the platform, the frame work slanted westward, so that at the level of the platform was an open space beyond the end of the platform of about three and one-half feet. Just before the accident occurred appellee and four other ladies had been in the store and on coming out, appellee's attention was attracted to some glassware in the window immediately above the platform. She and the lady with her walked upon the platform close up to the window and appellee fell into the cellar way either by the giving way of one side of the platform, or by slipping off the end next to the building. Appellee received such injuries by the fall as to confine her to the house for several months, and to require the attention of a physician and nurses in attending upon her.

It appears in evidence that appellee is a young married woman, living with her husband and supported by him, and it was not shown that she is possessed of separate property or engaged in the prosecution of a separate independent business.

On the trial below, appellee was permitted to prove, against the objections of appellant, that the services of appellee as housekeeper

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were worth four or five dollars a week from the time of the injury until the trial. Also that it would have cost $15 a week for a nurse during the same period of time. Appellee was also permitted to prove by her physician against the objections of appellant, that his medical services in attending upon her were worth about eighty or ninety dollars.

The court below, among other instructions to the jury for appellee, gave the following:

"The court instructs the jury, that, if they find for the plaintiff, they may, in estimating her damages, take into consideration all the pain and suffering undergone by the plaintiff, occasioned by the injury, if any is shown by the evidence, and expenses, including reasonable bills for nursing, if any are proved; for all her reasonable doctor bills as shown by the evidence; and if the jury find from the evidence that she was and is permanently injured by reason of the injury, the jury will consider this fact also, and allow her all such damages as the jury may determine that she is entitled to under all the evidence in the case."

The jury found a verdict in favor of appellee for $1,800, and judgment was rendered against the city for that amount and an appeal taken.

Two principal reasons are given by appellant for the reversal of the judgment and errors are assigned covering both. One is that there can be no recovery in this case because appellant had no notice of the dangerous character of the defect complained of in the sidewalk which occasioned the injury. The testimony introduced of actual notice of the condition of the sidewalk was not very strong or satisfactory, but what little was given to the jury tended to prove such actual notice.

It was also proved that the sidewalk in question is one of the public traveled streets of the city, not over a block from the court house, and had been in a dangerous condition for at least two weeks before the accident occurred. This brings the case within the rule that the corporate authorities knew or could have known by the exercise of reasonable diligence, the unsafe condition of the walk in time to have remedied the defect before the accident. City of Aurora v. Dale, 90 Ill., 46.

The other reason for the reversal is, the admission of improper testimony for appellee, and giving improper instructions to the jury in her behalf.

To us it is very clear that the wife cannot recover in this action any damages to which the husband alone is entitled. If he has expended money in employing nurses for the wife or in paying the bills of the physician for attending upon her, or if she has lost time by being unable to attend to her household duties, the loss would be a damage sustained by the husband for which he alone could sue, and such damages should constitute no part of a verdict rendered in favor of the wife. At common law the husband was alone entitled to sue for the loss of the services of his wife, through the tortious acts of the defendant, and for the expenses he has incurred in doctors and nurses in curing her of injuries resulting from an assault upon her by the defendant; but when damages were sought to be recovered for the bodily pain suffered by the wife from personal violence, or for injuries to her personal feelings, the wife must be a plaintiff in the action and the husband joined with her for conformity. By the old law, therefore, it was often necessary to bring separate actions for the recovery of the entire damages resulting from an injury to the person of the wife, in one of which the husband alone was made plaintiff and in the other the wife was joined for conformity. 2 Addison on Torts p. 534, par. 1294.

And we apprehend that under our statute now in force, separate actions would be necessary for the recovery of the entire damages, one for those sustained by the husband and one for those sustained by the wife.

In Tuttle v. C., R. I. & P. R. R. Co., 42 Iowa, 518, an action brought to recover damages for personal injuries to the wife, it was held under a statute almost a copy of our own, that in such an action the wife cannot recover for loss of time caused by the injury, unless she is engaged in the prosecution of a separate independent business, which thereby suffered detriment. Nor can she recover for money expended in procuring medical attendance and other expenses growing out of her injury, the husband alone having the right of action therefor.

It may be that in a case where the wife is dependent upon her own exertions for her support and has by contract made herself liable for medical attendance, and for the wages of nurses to care for her, when unable, by the injuries received, to take care of herself, she could recover such damages, but not in this case as now presented to us.

We think, therefore, the court erred in permitting such testimony to be given to the jury and in giving the instruction complained of by appellant.

The judgment must therefore be reversed and the cause remanded.

Judgment reversed.

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Services of Minor Child

In Kennedy v. New York Cent., etc., R. R. Co., 35 Hun, 187, it was held that a widow is entitled to the services of her minor child. The court said: "Whatever notion may have previously been entertained upon this subject, that question has lately been answered in the affirmative by a series of cases which must be deemed to settle it in this State. In Gray v. Durland, 50 Barb., 100, 211, the plaintiff, a widow, sued for the seduction of her minor child. It appeared that the daughter was of the age of sixteen years; that at the time of the seduction she lived at the defendant's house as a domessic and servant, receiving her wages and using them for her own support. The sole question presented in the case was whether the mother of the minor was entitled to her services. This appears from the opinion of Miller, J., delivering the opinion of the court, and by the opinion of Hogeboom, J., dissenting. The decision was that the mother, as such, had the right to maintain the action as the natural guardian of the minor, as the person bound to maintain and support her, and as the parent who is entitled to her services upon the death of her father. The case of Gray v. Durland was followed in Simpson v. Buck, 5 Lans., 337, which was an action by the mother to recover for the services of her minor son while in the employ of defendant. The only question presented was whether the mother was entitled to the services. The court below held that she was not, ann judgment went against her. Upon appeal the General Term reversed the judgment, saying that Gray v. Durland was put upon the ground stated above, and was decisive of the question. The same point was again presented in Furman v. Van Sise, 56 N. Y., 435; S. C. 15 Am. Rep., 441. In that, as in the former case, the daughter at the time of the seduction was not in the actual service of the mother, and the case turned upon the same question presented here, whether the mother being a widow was entitled to the service of her minor child. Judge Grover, delivering the opinion of the court, says that the law imposes upon the father the duty of providing for and maintaining the infant offspring; but after the death of the father the same law casts this duty solely upon the mother who must, if of sufficient ability, maintain, educate and take care of her infant children. As the result of this obligation, he says she is entitled to the custody and control of such children; succeeding in this respect not only to the obligations and duties primarily resting upon the father during life, but also to his right of custody and control, and to the services of the children. In this case, as in Gray v. Durland, there was strong dissent, so that it is clear that the decision was made upon full consideration of both sides of the question, not only at the argument, but in consultation. These cases are cited by Gilbert, J., in Certwell v. Hoyt, 6 Hun, 575, 577, as deciding that the widowed mother is entitled to the services of the minor child. We regard the rule as now firmly settled in this State upon the authority of the cases above cited." To the same effect, Hammond v. Corbett, 50 N. H., 501; S. C. 9 Am. Rep., 288; Matthewson v. Perry, 37 Conn., 475; S. C. 9 Am. Rep., 339.—*Albany Law Journal.*

The Difference between an "Assign" and an "Assignee."

The case of Hogg v. Brooks (L. R., 14, Q. B. D., 475), is somewhat important in its practical lesson. The action was for recovery of possession of premises by virtue of a proviso in a lease for twenty-one years, giving the landlord or his assigns power to determine the lease at the end of the first fourteen years, "by delivering to the tenant, his executors, administrators *or assigns*," six months' notice of his intention to so do. The plaintiff was assignee of the reversion, and had sent a notice by post to the former residence of the lessee, which notice was returned, and admittedly had not reached the lessee, who had become insolvent after mortgaging the lease. The defendant was tenant to the mortgagee, and the mortgage was by way of under-lease, probably for the whole term less one day. There was no provision in the lease for leaving the notice on the demised premises. Notices had been served on the defendant and upon the mortgagee. The question was whether notice had been delivered to the "assigns" of the lessee within the meaning of the proviso, and Mathew, J., who tried the case without a jury, held that it had not, and that, therefore, the plaintiff must fail. "Purkis," (the mortgagee by way of underlease), said the learned judge, "is not assignee (*sic*), but only a sub-tenant, and the notice could not be served by delivering it to Curtis" (the lessee). That the mortgagee was not *assignee* is, of course, clear enough, but in order to make the notice a bad one, it should have appeared that he was not an *assign*, within the meaning of the proviso. Is this perfectly clear? May it not be contended that a mortgagee by way of underlease for all the term except one day is, to all intents and purposes, the representative of the lessee for the purpose of receiving such

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notice? For convenience he has been constituted sub-tenant instead of assignee. The lesson of the case is the importance in all such cases of providing that notice may be served on the demised premises; and we have reason to believe that this is too often overlooked.—*Solicitor's Journal.*

A CURIOUS suit recently found its way into the New York courts and has just been stopped by the plaintiffs, who withdrew their charges. For some years Messrs. Street & Smith published in their *New York Weekly* a series of sensational novels by an Englishwoman named Charlotte M. Brame, but in reprinting them the editor substituted the name "Bertha M. Clay" as the author. The author died some time ago, but strange to say novels from Bertha M. Clay still come with singular regularity from the press of the John W. Lovell Company. Messrs. Street & Smith brought suit to restrain the publication of new books under that name, claiming to have invented it themselves, and that therefore it was their private trade-mark protected by copyright law. When the defendants undertook to show that the author, by sending advance sheets to Street & Smith, was breaking her agreement with a London house, and that the case could have no standing in a court of equity, it was withdrawn.

NOTES OF RECENT DECISIONS.

Telephone: Power to tax.—A statute authorizing the formation of telegraph companies applies to telephone as well as telegraph companies, though not expressly mentioned. The imposition of a tax by a common council of a city upon a telephone company, unless expressly authorized by its charter, is void. [Wisconsin Telephone Co. v. Oshkosh, S. C. Wis., 31 Alb. L. J., 350.]

Evidence: Communications made to Counsellor when Privileged. — Communications made to a counsellor in the course of his professional employment, by persons other than his client or his agents, are not privileged. The rule extends only to communications made by or on behalf of the client. [The court cites: Steph. Dig. Ev. Art. 115; Best Ev. § 581; Crosby v. Berger, 11 Paige, 377; and denies Greenough v. Gaskell, 1 Mylne & K., 98. [Randolph v. Quidniek Co., U. S. Cir. Ct. R. I., March 20, 1885; 23 Fed. Rep., 278.]

Inter-State Law: Exemption Laws of another State.—The exemption laws of another State or Territory cannot be pleaded or relied on as a defence, either by a garnishee or a judgment debtor in Iowa. The court says: "We regard it as the settled rule in this State that the exemption laws of another State or Territory cannot be pleaded or relied on as a defence either by the garnishee or judgment debtor. Newell v. Hayden, 8 Iowa, 140; Leiber v. Union Pac. R. R. Co., 49 Iowa, 688; Mooney v. Union Pac. R. R. Co., 60 Iowa, 346; S. C. 14 N. W. Rep., 343. See also, Burlington & M. R. R. v. Thompson, 16 Amer. & Eng. Ry. Cas., 480; S. C. 1 Pac. Rep., 622, and authorities there cited." [Broadstreet v. Clark, S. C. Iowa, April 8, 1885; S. C. 22 N. W. Rep., 919.]

Constitutional Law: Jury Fees in Criminal Cases.—The Constitution does not deprive the legislature of the authority to impose a reasonable jury fee to be taxed as a part of the costs against a person convicted of an offence. [Shaw v. State, S. C. Neb., March 17, 1885; 22 N. W. Rep., 772.]

Vendor and Vendee: Tender of Deed.—Where the vendee of real estate refuses to perform the contract on his part, and an action is brought to recover damages for the breach, no tender of a deed for the property is necessary before bringing the action. The rule is different, however, where the action is to recover the contract price. [Wasson v. Palmer, S. C. Neb., March 18, 1885; 22 N. W. Rep., 773.]

Chattel Mortgagee: Mortgage when Cannot Maintain Claim and Delivery.—A mortgagee of personal property cannot maintain an action of claim and delivery to recover possession of the same from a third person, when the mortgage provides that the mortgagor shall retain possession of the property mortgaged. [Laubenheimer v. McDermott, S. C. Mont., Jan. 29, 1885; W. C. Rep., 80.]

Judgment: Final for Purposes of Writ of Error.—The judgment is final for the purposes of a writ of error to the Supreme Court which terminates the litigation between the parties on the merits of the case, so that the lower court may execute its old judgment upon affirmance in the Supreme Court. [Mower v. Fletcher, U. S. S. C., March 30, 1885; 19 S. C. Rep., 779.]

Wills: execution: witnesses.—A paper writing purporting to be the will of A. was signed "A. by B," and witnessed: "Witness C." Held, that B. was not a subscribing witness within the meaning of the statute which requires two witnesses, and that the paper was erroneously admitted to probate. [Peake v. Jenkin, S. C. of Appeals of Virginia' March, 1885.]

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Petition for a Writ of Habeas Corpus.—This court cannot discharge, on habeas corpus, a person imprisoned under the sentence of a circuit or district court in a criminal case, unless the sentence exceeds the jurisdiction of that court, or there is no authority to hold the prisoner under the sentence.

The provision of Rev. Stats., § 1022, authorizing certain offences to be prosecuted either by indictment or by information, does not preclude the prosecution by information of such other offences as may be so prosecuted consistently with the Constitution and laws of the United States.

In the record of a general conviction and sentence upon two counts, one of which is good, a mis-recital of the verdict as upon the other count only, in stating the inquiry whether the convict had ought to say why sentence should not be pronounced against him, is no ground for discharging him on habeas corpus.

In the record of a judgment of a district court, sentencing a person convicted in one State to imprisonment in a prison in another State, the omission to state that there was no suitable prison in the State in which he was convicted, and that the attorney general had designated the prison in the other State as a suitable place of imprisonment, is no ground for discharging the prisoner on habeas corpus.

A certified copy of the record of a sentence to imprisonment is sufficient to authorize the detention of the prisoner, without any warrant or mittimus.

A person sentenced to imprisonment for an infamous crime, without having been presented or indicted by a grand jury, as required by the Fifth Amendment of the Constitution, is entitled to be discharged on habeas corpus.

A crime punishable by imprisonment for a term of years at hard labor is an infamous crime, within the provision of the Fifth Amendment of the Constitution, that "no person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury." [Ex parte, In the matter of James S. Wilson, S. C. U. S., Oct. Term, 1884.]

Will: Spendthrift Trust.—Testator provided by his will as follows: "I do appoint my son George as a committee for my son Levi, to take care of all his money and pay him the interest and so much of the principal that will give him a comfortable support." *Held*, That this was in the natnre of a spendthrift trust, and could not be attached by creditors. [Smith v. Savidge, S. C. Penn., 24 Leg. Int., 130.]

The Courts.

SUPREME COURT OF THE DISTRICT OF COLUMBIA

GENERAL TERM.

May 18, 1885.

Hine v. Magarity. Motion to dismiss overruled.
Mead v. Richards. Motion to set aside decree of January 6th argued and submitted.
Thomas v. Ragan. On hearing.

May 19, 1885.

Same. Argued and submitted.
Moore v. Barber et al. On hearing.

May 20, 1885.

Nat. Bank v. Hume. Argument begun.
Moore v. Langdon et al. Argued and submitted.

May 21, 1885.

Thomas v. Ragan. Opinion by Mr. Justice Cox, ordering new trial with leave to amend.
Moore v. Barber. Judgment below reversed and new trial ordered.
Second Nat. Bank v. Hume et al. On hearing.
McGill v District of Columbia. Argued and submitted.

May 22, 1885.

Second Nat. Bank v. Hume et al. Argued and submitted.

May 25, 1885.

McGill v. District of Columbia. Opinion by Judge Merrick affirming judgment below.
Second National Bank v. Hume & Cleary. Cause remanded and a new trial ordered.
Fisher v. Lighthall. Opinion by Justice James affirming judgment below.
Stern et al. v. Eiseman Appeal dismissed.
Jones v. B. & P. R. R. Co. Argued and submitted.
Gibbons v. Mahon. On hearing.

May 26, 1885.

Same. Argued and submitted
Harris et al v. Danenhower. Decree below affirmed with costs.
Gross v. Goldsmith. Decree below affirmed.

May 27, 1885.

Fitch, Fox & Brown v. Hecht. Submitted
Dubois v. Boarman Decree below affirmed with costs.
Flannery v. B. & O. R. R. Co. On hearing

May 28, 1885.

L. E Gannon v. District of Columbia. Judgment below affirmed.

May 29, 1885.

Eiseman v. McMichael. Order quashing replevin and sent back for further proceedings
Hume v. Temple. Judgment below affirmed.
Scheutzen Park Co. v. Schmidt & McCoun. On hearing.

IN EQUITY.—New Suits.

May 23, 1885.

9457. Lambert T. Follansbee v. Wm. H Clagett, trustee. Injunction, &c. Com sol, Thomas F. Miller

May 25, 1885

9458 Robert T. Campbell v. Sarah Campbell. Divorce. Com sol, T. J. Mackey.
9459. John H. Carll et al. v. John H. Glick et al. For acct. Com sol, F. H. Mackey.
9460. Millard Metzger et al. v. Sarah A. Gladmon et al. Judg't creditor's bill. Com sol, F. T. Browning.

May 26, 1885.

9461. James H. Byram v. Levi P. Wright et al. Injunction Com sol, J. E McNally.
9462 Emily A Moxley et al. v Wilfred L. Moxley et al. To quiet title. Com sols, Carusi & Miller.

May 27, 1885.

9463. Ellen J, Murphy v. Washington Danenhower et al. For acct. Com sol, R D. Mussey.
9464. Wm. Taylor Snyder, trustee, v. Adelaide E. Baker et al. To construe. Com sol, C D Fowler.
9465 Mary M Cull v. John W. Bayne Injunction. Com sols, Gordon & Gordon.

May 28, 1885.

9466 George H. Foskey v. Emma Foskey. For divorce. Com sol, J. Ambler Smith.
9467. Fannie L Taylor v. Wm. B Taylor. For divorce. Com sol, John Cruikshank.

CIRCUIT COURT.—New Suits at Law.

May 25, 1885.

26189. Luchs & Bro. v. Hamilton Adams. Acct, $137 56 Piffs atty, C. D Fowler,

May 26, 1885.

26190. John Ambler Smith v. Albert McIntosh et al. Notes, $618. Piffs atty, John Cruikshank.
26191. Abraham Bondonine v. Gett & Mertz. Acct., $799 44 Piffs atty, Mills Dean.
26192. Lewis Johnson & Co. v. James B. Browne et al. Notes, $470. Piffs attys, Carusi & Miller.

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May 27, 1885.

26193. Dennis Brane v. Henry Larman. Note, $268.97 Piffs attys, Newton & Berryman.

26194. Frederick Kooney v. John F. Cook. Damages, $1000. Piffs attys, Birney & Birney.

May 28, 1885.

26195 Michael McCormick v. Henry Larman. Notes and acct., $307 58. Piffs atty, H. H Wells.

26196. Luchs & Bro. v. J. T. Bradshaw Judg't of Justice Helmick, $52. Piffs atty, Chas D. Fowler.

PROBATE COURT.—Justice Hagner.

May 29, 1885.

Estate of Hanson Brown; order on Jesse W. Jackson to pay $160 with interest.

Estate of Z. Root: will filed for probate.

Estate of Alex Campbell; order of publication.

Estate of Thomas J. Middleton: Letters of administration granted to Elizabeth Middleton

Estate of Geo H Miller; Elizabeth A. McCoy appointed guardian; bond, $8000.

Estate of Mary A. Buckley; petition of Phœbe Livermore for letters.

Estate of Agatha E. Dow; petition of Belle Burche for order on guardian to pay for support of infant.

Estate of Z. Root; W C. McIntyre appointed guardian to Heloise Z. Root.

Estate of Mary C. King; Theodore F. C. King appointed guardian to Mary Cecelia King on bond of $3,000.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business. May 28th, 1885

In the case of Benj. F. Leighton, Administrator of Daniel S. Jones, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 26th day of June A. D. 1885, at 11 o'clock, a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 22 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Holding a Special Term for Orphans' Court Business. May 28th, 1885.

In the case of Andrew J. Taylor, Executor of Ann or Annie E. Rotchford, dec'd, the Executor aforesaid has, with the approval of the Court, appointed Friday the 19th day of June, A. D. 1885, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test 22 H. J RAMSDELL, Register of Wills.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Mary C. Young, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 22d day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of May, 1885

IGNATIUS F. YOUNG,

WM W. BOARMAN, Solicitor. 22 Executor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, this twenty first day of May, 1885

ROBERT J. CAMPBELL v. SARAH CAMPBELL. } In Equity. No. 9458.

Application for divorce on the ground of desertion.

On motion of the plaintiff, by Thomas J. Mackey, his solicitor, it is ordered that the defendant, Sarah Campbell, cause her appearance to be entered herein on or before the first rule-day, occurring forty days after this day; otherwise the cause will be proceeded with as in case of default,

By the Court. A B HAGNER, Justice.

True Copy Test: 22 R. J. MEIGS, Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 29th, 1885.

In the matter of the Estate of Mary Buckley late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased, has this day been made by Phœbe E. Livermore.

All persons interested are hereby notified to appear in this court on the 26th day of June next at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test 22 H. J RAMSDELL, Register of Wills.

FRANKLIN H. MACKEY, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 29th, 1885.

In the matter of the Estate of Antoinetta E Beecher, late of the District of Columbia, deceased

Application for Letters of Administration on the Estate of the said deceased has this day been made by Hosea B. Monilton.

All persons interested are hereby notified to appear in this court on Friday the 26th day of June next at 11 o'clock, a. m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day,

By the Court. A. B. HAGNER. Justice.

Test: 22 H. J. RAMSDELL, Register of Wills

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 29th, 1885.

In the matter of the Estate of Alexander Campbell. late of the City of Boston; Mass., deceased.

Application for Letters of Administration d. b. n on the Estate of the said deceased, has this day been made by Frederick L Moore.

All persons interested are hereby notified to appear in this court on Friday, the 26th day of June, 1885, at 10 o'clock a. m., to show cause why Letters of Administration d b n. on the estate of said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court A. B. HAGNER, Justice

Test: 22 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 27th day of May, 1885.

WM. TAYLOR SNYDER, Trustee, v. ADELAIDE E. BAKER et al } No. 9464. Eq. Doc. 24.

On motion of the plaintiff, by Mr. Charles D. Fowler, his solicitor, is it ordered that the defendants, Adelaide E Baker, Sarah G. Penasco de Gale, Norberk Penasco de Gale, R Carter Wellford, B. Randolph Wellford, Armistead N. Wellford, Virginia T. Lewis, administratrix w. a., Virginia T. Lewis, Henry G. Lewis, Trapiere S Lewis, Etta T. Key, Etta T. Smith; Joseph Hall Key, Charles E. Key, Harriet H. Key and all unknown heirs of H G. S. Key and Henrietta H., his wife, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court, A. B. HAGNER, Justice.

A true copy. Test: 22 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business. May 29th, 1885.

In the matter of the Will of Zelina Root, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by William Cranch McIntyre, one of the executors.

All persons interested are hereby notified to appear in this Court on Friday, the 26th day of June next, at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B HAGNER, Justice.

Test: 22 H. J. RAMSDELL, Register of Wills.

C. C. COLE, Solicitor.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business. May 29th, 1885.

In the case of Edward Derrick, Administrator of William S. Derrick, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 26th day of June, A. D. 1885, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 22 H. J. RAMSDELL, Register of Wills.
GORDON & GORDON, Solicitors.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Thomas B Medary, late of the District of Columbia, deceased

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 27th day of May next; they may otherwise by law be excluded from all benefit of the said estate,

Given under my hand this 27th day of May, 1885.

KITTIE W. MEDARY.
EDWARDS & BARNARD Solicitors. 19 Executrix.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Catharine Morgan, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 27th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of April, 1885.

DAN'L P. MORGAN,
F. P. B. SANDS, Solicitors. 22 Administrator.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Eliza Miles, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 28th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of May, 1885.

HENRY BAILEY,
ROBT. J. MURRAY, Solicitor 22 Executor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

JOHN LANG
v. } In equity. No. 9356.
MARGARET LANG et al.

This cause came on to be heard on the report of the trustee that he had sold all that piece or parcel of land and premises mentioned in the proceedings and described as follows: Beginning at a point on the west line of the seventh street plank road, twelve perches from the intersection of said west line with Taylor's Lane road, said point being the northeast corner of J. C Lewis' lot, running thence north 89°, west, 14 05 perches; thence north 2¾°, west, 8 02 perches; thence south 89°, east 14.05 perches, to the intersection with said west line of Seventh Street road; thence with said line of said road south 2¾°, east 8 02 perches, to the place of beginning, together with the improvements thereon, to Andreas Loffler, for ($3,650) three thousand six hundred and fifty dollars; that the said purchaser has complied with the terms of sale, and that the said sale was fair and bona fide. And on motion of counsel, whereupon it is, this fourth day of May, by the court adjudged and ordered that the said sale be, and the same is, hereby ratified unless cause be shown to the contrary on or before the 4th day of June, A. D. 1885. Provided that a copy of this order be published once a week for each of three successive weeks in the Washington Law Reporter before that date

A. B. HAGNER.
A true copy. Test: 19 R. J. MEIGS, Clerk.
D. W. GLASSIE, Solicitor.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

ELIZA C. JACKSON et al
v. } No 9395. Equity.
ELIZABETH L. JACKSON et al.

William H. McElfresh, the trustee herein, having reported a sale of lot 5, in square 871, in Washington City, in the District of Columbia, to Charles C. Meads, for $3,000.

It is this 27th day of May 1885, ordered, that said sale be confirmed, unless good cause to the contrary be shown on or before the 27th day of June 1885. Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said day.

A. B. HAGNER.
A true Copy Test: 22 R. J. MEIGS, Clerk

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

JOHN T. S CROGGAN et al
v. } No 9093. Equity.
SAMUEL AMERY et al.

James S. Edwards, trustee herein, having reported a sale of part of lot 3, square 494 (particularly described in the proceedings herein) in Washington City, in the District of Columbia, to William Henery, for $3 060.

It is this 27th day of May, 1885, ordered, that said sale be confirmed, unless good cause to the contrary be shown on or before the 27th day of June, 1885. Provided a copy of this order be published in the Washingcon Law Reporter once a week for three successive weeks before said day.

A B HAGNER,
A true copy 22 Test: R J. Meigs, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 29th, 1885

In the case of Reginald Fendall, Administrator of Gilbert M. Wight, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 26th day of June, A D. 1885, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter and in The Evening Star previous to the said day.

Test 22 H J RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 9th day of May, 1885.

SARAH E. CHASE
v. } No. 9409. Equity.
DENNIS TIERNEY et al.

On motion of the plaintiff, by Mr Duhamel, her solicitor, it is ordered that the defendant Mathilda Kaufman, cause her appearance to be entered herein on or before the first rule day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
True copy. Test: 19 R. J. MEIGS, Clerk

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 6th day of May, 1885.

HENRY FETTER
v. } No. 9340. Equity.
THOMAS J. LOGAN et al.

On motion of the plaintiff, by Mr. Saville, his solicitor, it is ordered that the defendant, Frederick S. Bletz, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 19 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 29th, 1885.

In the case of John Mitchell, Administrator of David Welsh, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 26th day of June, A. D. 1885, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

Test: 22 H. J. RAMSDELL, Register of Wills.
JOHN A. HAYWARD, Solicitor.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 29th, 1885.

In the matter of the Estate of Hunter Brooke, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Louisa H. Bailey and Lorenzo A. Bailey, of Greensboro, N. C.

All persons interested are hereby notified to appear in this court on Friday, the 26th day of June, next, at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B HAGNER, Justice.
Test: 22 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 29, 1885.

In the matter of the Will of Michael Caton, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration cum testamento annexo on the estate of the said deceased has this day been made by Mary Caton, a daughter of said decedent.

All persons interested are hereby notified to appear in this court on Friday, the 26th day of June next, at 12 o'clock, m., to show cause why the said Will should not be proved and admitted to Probate and Letters with will annexed on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B HAGNER, Justice.
Test: 22 H. J. RAMSDELL, Register of Wills.
CHAS. A. ELLIOT, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 20th day of May, 1885.

IDA MAY STANSBURY et al
v.
FRANK INGLEHART et al. } No 7781. Eq. Doc 21.

On motion of the plaintiffs, by Mr. J J. Darlington, their solicitor, it is ordered that the defendant, Annie H. Grell, cause her appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
True copy. Test: 21 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 21st day of May, 1885.

JOHN CONDON
v.
SUSAN CONDON. } Equity. No 9453.

On motion of the complainant, by Mr. Jas. McD. Carrington, his solicitor, it is ordered that the defendant, Susan Condon, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A B. HAGNER, Justice.
A true copy. Test: 21 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business. May 18th. 1885.

In the matter of the Estate of Rollins Thorne, late of Peru in South America, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by John F Ennis.

All persons interested are hereby notified to appear in this Court on Friday, the 12th day of June next at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 21 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 18h day of May, 1885.

JOSEPH W. BABE
v.
CHRISTOPHER C. KIBBLE et al. } No. 9435. Eq. Doc. 24

On motion of the plaintiff, by Mr. Kimball, his solicitor, it is ordered that the defendant, Annie Kibble, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
True copy. Test: 17 R. J. MEIGS, Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

THE UNITED STATES OF AMERICA
v.
SAMUEL S. SMOOT et al } Equity. No. 4944.

Randolph Coyle, trustee herein, having reported that he has sold to Horace F. Page at and for the price of fifteen thousand four hundred and fifty dollars ($15,450.00) Lot 12 in Kidwell's subdivision of Square No. 217, it is by the court this 19th day of May, A. D. 1885, ordered that the said sale be ratified and confirmed unless cause to the contrary be shown on or before the 18th day of June, A. D. 1885. Provided, that a copy of this order be published in the Washington Law Reporter for three successive weeks prior to said last mentioned date.

A. B HAGNER.
A true copy. Test: 21 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscribers of the District of Columbia hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Patrick Cullinane, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscribers on or before the 1st day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 1st day of May, 1885.

E D DONNELLY,
JOHN F. CULLINANE.
HINE & THOMAS, Solicitors. 19 Executors.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of John Beck, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscribers on or before the 24th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under out hands this 24th day of April, 1885.

CHRISTIAN RUPPERT,
JOHN L VOGT,
HANNA & JOHNSTON, Solicitors. 19 Executors.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Thomas J. Irwin, late of the District of Colnmbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of April, 1885.

SUSAN IRWIN,
JOHN E. MCNALLY, Solicitory. 19 Administratrix.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t a. on the personal estate of Daniel Justus O'Connor, late of the District of Columbia, deceased.

All persons having claims again the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 25th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of April, 1885.

19 CHARLES C DUNCANSON.
C. A WALTER, Solicitor 19 Administrator c t.a.

THIS IS TO GIVE NOTICE

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Anton Heitmuller, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 24th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 24th day of April, 1885.

HENRIETTA HEITMULLR.
GEO. F. APPLEBY, Solicitor. 19 Executrix.

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Legal Notices.

THIS IS TO GIVE NOTICE
That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration on the personal estate of Mary Jane Martin, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of May next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 9th day of May, 1885.
ELIZA E. THORN,
A. B. DUVALL, Solicitor. 21 Admistratrix.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, May 22d, 1885.
In the matter of the Estate of Charles R Clifton, late of the District of Columbia, deceased
Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Katie Clifton.
All persons interested are hereby notified to appear in this court on Friday, the 12th day of June next at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. A. B. HAGNER, Justice.
Test; 21 H. J. RAMSDELL, Register of Wills.
O T. THOMPSON, Solicitor

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Sarah Swift, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 19th day of May next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 19th day of May, 1885.
GEORGE W. BONNELL,
WM T. BALEY, Solicitor 21 Executor.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of William Henry Harrison, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 27th day of April, 1885.
JEROME A. JOHNSON,
20 Executor.

THIS IS TO GIVE NOTICE,
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administratian on the personal estate of John Walker Maury, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of May next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 14th day of May, 1885
C. B MAURY,
WM. A. MAURY, Solicitor. 20 Administrator.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of William A. Webster, late of the District of Columbia deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of May next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 13th day of May, 1885.
CATHARINE WEBSTER,
E. H THOMAS, Solicitor. 20 Executrix.

Legal Notices.

THIS IS TO GIVE NOTICE,
That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Laura O. Taylor, late of the District of Columbia deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 30th day of April, 1885
GEORGANNA C. BIRD,
O. T. THOMPSON, Solicitor. 20 Executrix.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Elizabeth Margaret Jones, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of May next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 15th day of May, 1885.
20 GEO. T. JONES, Executor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 15, 1885.
In the matter of the Estate of Edward Foreman, deceased late of City of Washington, District of Columbia.
Application to take proof whether certain written papers filed in the matter of the estate of said Edward Foreman, should be admitted as the last Will and Testament of said Edward Foreman, and for Letters of Administratron on the estate of the said deceased, has this day been made by Fannie V. Baggett and William J Miller.
All persons interested are hereby notified to appear in this court on Friday the 12th day of June next at 10 o'clock, a. m., to show cause why the said paper writings should not be proved and admitted to Probate as the last Will and Testament of said Edward Foreman, and Letters of Administration or letters of administration with will annexed on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter and The Evening Star, previous to the said day.
By the Court. A B. HAGNER, Justice.
Test: H. J. RAMSDELL,
Register of Wills for the District of Columbia.
CARUSI & MILLER, Solicitors. 20

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Holding a Special Term for Orphans Court Business. May 11th, 1885.
In the matter of the estate of John Carter Ramsden, late of Gisthorpe, Parish of Filey, County of York, England, deceased.
Application for Letters of Administration on the estate of the said deceased has this day been made by Samuel Webb Parker and Henry Blackman in favor of Henry C, Hazard.
All persons interested are hereby notified to appear in this court on Friday, the fifth day of June next at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. A B. HAGNER, Justice.
Test 20 H. J. RAMSDELL, Register of Wills.
R. D MUSSEY, Proctor

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 14th day of May, 1885.
MAGGIE E. PAYNE } No. 9227.
v.
THOMAS J. PAYNE.
A bill for divorce on the ground of desertion.
On motion of the plaintiff by Mr. Frank T. Browning, her solicitor, it is ordered that the defendant Thomas J. Payne, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.
By the Court. A. B. HAGNER, Justice
True copy. Test: 20 R. J. MEIGS, Clerk.

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Legal Notices.

THIS IS TO GIVE NOTICE
That the subscribers, of Washington, D. C. and Lancaster, Pa., respectively, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Rebecca Reynolds, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 16th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 16th day of May, 1885
REBECCA REYNOLDS KRUG,
JOHN F. REED.
F. P. B. SANDS, Solicitor. 21

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of John E Kendall, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of May, 1885
JOHN BLAKE KENDALL,
EDWARDS & BARNARD, Solicitors. 21 Executor

THIS IS TO GIVE NOTICE:
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Sophia Bender, late of the District of Columbia, deceased

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of May next: they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 1st day of May, 1885
SUSAN L DURANT,
902 Sixth street, N. W.
21 Administratrix

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Bell W. Deal, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of May, 1885.
21 G. H. SLAYBAUGH, Executor

THIS IS TO GIVE NOTICE.
That the subscriber, of Washington City, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John W. Tucker, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of April, 1885.
ALBERT F FOX,
HOSEA B. MOULTON, Solicitor. 21 Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 22d, 1885.

In the matter of the Estate of Nora Maclay, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by R. Ross Perry.

All persons interested are hereby notified to appear in this court on Friday, the 12th day of June next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 21 H. J. RAMSDELL, Register of Wills.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, the 22d day of May, 1885.

In the matter of the Estate of George Taylor, late of Washington City, District of Columbia, deceased.

The petition of Jno. St. C Brookes asking that Letters of Administration with the will annexed on the estate of the said deceased may be granted to Julian T. Burke, of Alexandria, Va., having been heretofore made to this court.

All persons interested are hereby notified to appear in this court on Friday, the 12th day of June next at 11 o'clock, a. m., to show cause why Letters of Administration with the will annexed on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to said day.

By the Court. A. B. HAGNER Justice.
A true copy Test: 21 H. J. RAMSDELL,
Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 22d, 1885.

In the matter of the Estate of Caleb Gardner, late of Newport, State of Rhode Island, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration with the will annexed on the estate of the said deceased has this day been made by William F. Gardner and Cazenove G Lee.

All persons interested are hereby notified to appear in this court on Friday the 12th day of June next at 12 o'clock, m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration with the will annexed on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 21 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 22d, 1885.

In the case of Henry L. Rose and Benjamin F. Larcombe, Administrators of George H Larcombe, deceased, the Administrators aforesaid have, with the approval of the court, appointed Friday, the 12th day of June, A. D. 1885, at 11 o'clock a m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Administrators will take the benefit of the law against them. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 11 H. J. RAMSDELL, Register of Wills

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

THE NATIONAL UNION INSURANCE CO. v. JOHN B. TYLER ET AL. } No 8664. Eq. Doc 23

The trustee in this case, John C. Heald, having reported to the court that he has sold sub lots six (6) seven (7), eight (8), nine (9), ten (10) and eleven (11) and part of original lot one (1) in square numbered six hundred and thirty (630) to Andrew Wylie, for six thousand eight hundred and sixteen 38-100 dollars ($6,816 38). It is this 22d day of May, 1885, ordered, that said sale shall be finally ratified unless cause to the contrary be shown on or before the 22d day of June, 1885. Provided, a copy of this order be published, in the meantime, once a week for three successive weeks in the Washington Law Reporter and the Evening Star.

A B HAGNER.
A true copy. 21 Test: R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE,
That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Julia T, Miller, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of May, 1885.
ELIZABETH A McEVOY,
WM. J. MILLER, Solicitor. 21 Executrix.

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Washington Law Reporter

WASHINGTON - - - - - - - - June 6, 1885.

GEORGE B. CORKHILL - - EDITOR

Captured and Abandoned Property Act.

JOHN YOUNG, *Assignee of Alexander Collie,*

vs.

THE UNITED STATES.

97 Otto.

The action was brought under the 13th section of the "Act to provide for the collection of abandoned property," &c., to recover the net proceeds of cotton owned by Collie, a subject of Great Britain, resident in England, and captured at Savannah during the late civil war. It was shown at the trial that Collie had traded with the Confederates, and made them gifts of improved cannon and munitions of war, and sums of money, and thus furnished to them "aid and comfort." Judgment was rendered for the defendants.

In their opinion, the court says: "There can be no doubt that the words 'aid and comfort' are used in the statute in the same sense they are in the clause of the Constitution defining treason (art. 3, sec. 3); that is to say, in a hostile sense." Acts may be hostile, and yet not crimes. And the words aid and comfort do not of themselves denote crimes and are not technical words, nor are they used as such, in the Constitution or the statute. In Art. 3, sec. 3, the definition of treason is complete in the phrase, "adhering to their enemies." And the subsequent words, "aid and comfort," refer to the previous word "adhering," and construe it to mean *acts of assistance*, as distinguished from sympathy and mere sentiment.

The 13th section of the act of March 3, 1863, amending the statute establishing the Court of Claims, recognized the distinction between the act and the crime of aiding the rebellion, by making the act "*per se*" a bar to an action by a claimant, "*whether a citizen or not.*"

And the Supreme Court, in their opinion, applied the distinction to the 3d section of the act of March 12, 1863, relating to abandoned and captured property, and held that under that section a non-resident alien, though incapable of the crime of aiding the rebellion, was, by his act of aiding the rebellion, barred of his action in the Court of Claims to recover the proceeds of his captured cotton in the Treasury. The court said: "But there may be aid and comfort without treason, for treason is a breach of allegiance, and can be committed by him only who owes allegiance, either perpetual or temporary. The benefits of the statute are withheld, not for treason only, but for giving aid and comfort to rebellion." (P. 62.)

The opinion of the court states as follows: "Beyond all doubt, the late rebellion was a sectional civil war, and all persons interested in or affected by its operations are entitled to have their rights determined by the laws applicable to such a condition of affairs. It is equally beyond doubt, that during the war, cotton found within the Confederate territory was a legitimate subject of capture by the national forces."

And of the effect of capture in war, the court says: "The rightful capture of moveable property on land, transfers the title to the government of the captor, as soon as the capture is complete; and it is complete when reduced to firm possession. There is no necessity for judicial condemnation."

It is certain that all captured cotton, the proceeds of which were in the Treasury, had been reduced to "firm possession," and that as a consequence the United States acquired by the capture the legal title of such cotton, and were free to use its proceeds according to their pleasure. And the 3d section of the statute of March 12, 1863, declared the purpose of using such proceeds as a bounty for persistent loyalty.

The opinion of the court says: "The statute of March 12, 1863, was passed in the dark hour of the national cause." And of its enactment, it states as follows: "The Government of the United States, in passing the abandoned and captured property act, availed itself of its just rights as a belligerent. The capture of cotton and certain other products peculiar to the soil of the Confederacy, had become one of the necessities of the war. In no other way could the resources of the enemy be so effectually crippled." (P. 61.)

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Another and a direct mode of crippling the resources of the enemy, was to prevent the accession to his cause of numbers, with its consequences of increased strength and means. And the 3d section of the statute of March 12, sought to do this by assuring to the citizens of the Confederate States the net proceeds of their captured property, on condition that they maintained their loyalty. The statute in this used the relation of sovereign and subject, and no other. And this bounty on loyalty, like the land and fishery bounties, was a State policy. Its purpose was the security of the State in its "dark hour." And those who buy security, buy it for their own benefit, and not for the benefit of those of whom they buy it. And this bounty, like the land and fishery bounties, was promised in advance, and therefore was an inducement, and not a reward. And it was promised on condition, and when the condition was fulfilled, it became a legal debt, and as such, the statute committed its proof and recovery to the Court of Claims, whose jurisdiction was at the common law only; and thus the statute neither employed nor required a trust or a trustee for its execution.

As the opinion of the court distinguishes between the act and the crime of aiding the rebellion, and decides that the act, *per se*, bars the recovery of a claimant under the 3d section of the statute 12 Mar., 1863, it follows that the bar is not removed by pardon, for that operates on the crime only, and arrests its legal consequences. But it cannot affect the act, because it cannot prevent or alter an act that occurred in a time that is past. The opinion of the court cites the language of the court in the previous case of Padelford v. The United States, 9 Wallace, 431, as follows: "The law makes the proof of pardon a complete substitute for proof that he gave no aid and comfort to rebellion." But a pardon for disloyalty of itself proves the act of disloyalty, for it is predicated on that, and takes from it all its legal effect, and without it would be a nullity. The combination of innocence and pardon is an incongruity, amounting to a legal impossibility.

And as the opinion decides that belligerent capture, when complete, transfers the title of the captured property to the government of the captors, and that "there is no need of judicial condemnation," it follows that the proceeds of the captured cotton in the Treasury were vested in the United States as fully as they could have been by judicial condemnation; and that such proceeds were money of the United States in the Treasury, and could not be withdrawn except by an appropriation by Congress; and on the authority of Knote v. United States, 95 Otto, 149, pardon by the President could give no right to them.

The result is that persons disloyal in the late rebellion, and pardoned by the President, had no right to the return of the net proceeds of their captured cotton in the Treasury under the 3d section of the statute of March 12, 1863.

Supreme Court District of Columbia

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

UNITED STATES, to the use of JOHN LANG ET AL.,

vs.

PHILIP MAY AND PETER MAY.

LAW. No. 23,172.

Decided March 23, 1885.
The CHIEF JUSTICE and Justices WYLIE and JAMES sitting

1. When an executor, who is also a guardian, has no further use for assets as executor, he will be treated as holding them as guardian, whether he has settled his account or not; no particular form, such as endorsement from himself as executor to himself as guardian, is necessary to effect a transfer, that being done by the law.
2. A trustee has always the right to come into court and surrender his trust; and when he does so, and is thereupon relieved of his trust on paying the funds into court, he cannot be held for any loss subsequently occurring.

THE CASE is stated in the opinion.

J. J. JOHNSON and CHAS. A. ELLIOT for plaintiffs:

It is well settled that if an executor has in his hands a good and collectable note, received by him in the due course of administration, and fails to collect it, or allows it to get out of his possession, whereby loss inures to any one interested in the estate, he is liable for a *devastavit*.

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It is upon this principle that the plaintiffs seek to recover in this case.

All debts were paid, and they ought to have received two-thirds of said note; but the same, through the act of the executor, got into the hands of the widow of Lang, and has been lost to the estate.

It is insisted by the plaintiffs that they are entitled to recover in this action; but the defendants, by way of defence, show that Philip May was also testamentary guardian of plaintiffs, and in January, 1872, on his own petition, was relieved by order of the Orphans' Court as guardian, and directed to turn over to the court the assets in his hands; and in pursuance thereof he delivered the note to the register of wills, who afterwards, on a verbal order, as it is claimed, of Mr. Justice Olin, delivered it to the widow of Lang, who has disposed of it.

Prior to the passage of the order revoking the certificate of guardian, the defendant's account as executor had been approved and passed, and distribution ordered; but in this account the executor does not charge himself with the note, but only the interest thereon collected by him.

This fact alone shows that he understood perfectly well that his executorship continued until the payment of this note, and that another account and order of distribution was necessary.

He was bound to exercise at least ordinary care in preserving the assets; and this he did not do.

Under an order of court relating to assets in his hand as guardian (and he knew what they were, for he had previously settled his accounts in that capacity) he parted with assets held by him as executor, and not referred to or embraced in the order, and thereby the plaintiffs have lost their share of the proceeds.

An executor having once qualified continues to be executor, and is liable for any loss to the estate through his fault, until all the assets, as far as possible, have been collected, and an order of distribution made. In the present case the defendant received the note as executor; and, it not being divisible, and the widow having an interest in the proceeds jointly with the plaintiffs, he held the note in that capacity until its maturity; and, as shown by the record, the note did not mature until about a month after he turned it over to the register. Nor does it make any difference that he was testamentary guardian of the plaintiffs, and that the court relieved him. The order could only operate on any assets in his hands as guardian, and at that time he held the note as executor. He had not charged himself in his account as guardian with any part of the note; and until he had done some act to charge himself in a different capacity, he in law held it, and was bound to account for it as executor, having received it as such. Newcomb, judge, v. Williams, 9 Met., 532, 533; Conkey, judge, v. Dickinson, 13 Met., 53, 54; Prior, executor, v. Talbot et al., 10 Cush., 1; Miller et ux. v. Congdon, executor, 14 Gray, 114; Hall, judge, v. Mackay, 9 Pick., 395; United States, in re Turnburke, v. Parker, 2 Mac A., 444, 451; 2 Perry on Trusts, sec. 574.

A. C. BRADLEY for defendant:

When the defendant had settled his first and final account, all debts of the deceased having been paid, it became his duty to deliver up the estate in his hands to those entitled. Act of Maryland, 1798, c. 101, subc. 10, sec. 6.

From that time, as he was acting in the two capacities of executor and testamentary guardian, under bond in the latter as well as the former, he held the interests of his wards in the assets in the capacity of guardian, and became responsible to them as such, although no account was filed, in which, as executor, he distributed the note in controversy to himself as guardian. Seegar v. State, 6 H. & S., 162; Watkins v. Wells, 2 G. & J., 220; State v. Jordan, 3 H. & McH., 180; Kirby v. State, 51 Md., 392; State v. Chester, 51 Md., 376; Bank v. Sharp, 53 Md., 527.

As guardian, he acted prudently and carefully, in committing the assets in his hands to the custody of the court, and he could not be held responsible for any subsequent loss. It would have been equally commendable and protective to him as

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executor, had he surrendered the assets to the custody of the court nominally as executor.

An executor or trustee who acts in good faith and with ordinary prudence and care, will not be charged with loss. 2 Williams, Exec., *1630; Thompson v. Brown, 4 Johns. Ch., 619.

Mr. Justice WYLIE delivered the opinion of the court.

John Lang, by his will, bequeathed one-third of his property to his widow and the residue to his two sons, and appointed Philip May, one of the defendants, executor, who duly qualified, and letters testamentary were issued to him on the 20th of November, 1869. The defendant, Peter May, was one of his sureties. Among the assets of the estate was the note of Nicholas May, dated February 21, 1867, for $1,200, payable, to the order of John Lang, five years after date, with interest at six per cent. and secured by deed of trust upon real estate. The note was good and collectable on maturity, and came into the hands of Philip May, the executor. The suit is based upon the supposed right of the plaintiff to recover by reason of the failure of the executor to collect the amount due on this note, two-thirds of which the plaintiffs claim. On the same day that May secured his letters testamentary he also qualified as guardian for the plaintiffs, who were then about the respective ages of thirteen and three years.

In his first and final account as executor, he charges himself with interest collected on this twelve hundred dollar note, but neither charges himself with the note as executor or guardian. In January, 1872, in contemplation of a visit to Europe, he filed a petition praying to be relieved of his duties as guardian, and, on the same day, an order was passed revoking the certificate of guardianship. That order recites that the guardian had turned over to the custody of the court the balance of the funds due to his wards, among which was this note for twelve hundred dollars.

As executor, this note was never embraced in his inventory, but, when he came to settle his final account as executor, he charged himself with certain interest upon the note. The settlement of that account showed that all the debts were paid, and that this note was in his hands at the time. But whether in his hands as executor or as guardian depends upon circumstances.

The authorities in Maryland upon this subject are very decisive. It is settled there that from the time the executor who is also guardian has no further use for assets as executor he will be treated as holding them in his capacity of guardian whether he has settled his account or not. Watkins v. Wells, 2 G. & J., 220; State v. Jordan, 3 H. & McH., 180; Kirby v. State, 51 Md., 392; State v. Chester, 51 Md., 376, and Bank v. Sharp, 53 Md., 527.

Having, therefore, no further use as executor for this note, in construction of law, he must be considered as having held the note as guardian.

But it is said that he did no act to transfer it; that he did not indorse it from himself as executor to himself as guardian. That is very true, but the indorsement is not necessary in a case of that kind. An executor sues in his capacity as executor for any debts due the estate by virtue of the authority conferred upon him by the law, and so it is as guardian. If the guardian is entitled to the property under a certain sense of it the law gives him the authority to sue. He derives his authority from the law, and not from any transfer from himself as executor to himself as guardian.

The law conferring the authority upon him, then, as guardian to bring suit for whatever is collectable, for whatever assets belong to him in that capacity, there is no form required to effect a transfer of assets from himself as executor to himself as guardian. The law effects the transfer and gives him the power in any proper case to bring suit.

It is true also the executor is a trustee for the legatees. The debts having been discharged he held this note as trustee for these two children. What results from that? He held the note in the first instance as executor, but then it was in trust for himself representing the children as guardian, and when he took this note along with the other assets into the court, that

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was a formal announcement that he held the note or claimed to hold the note as guardian for the children.

He was anxious to get away. He was discharged already as executor when he closed his personal final account. What was he to do with this note? It was not due yet. He held twothirds of it for these minors, and the other one-third for the widow. Well, he did asany trustee has always a right to do; it is always the privilege of a trustee to come into court and surrender his trust. There is no kind of trust in which the trustee may not be discharged in that way if he proceeds properly. So this defendant presented himself before the Orphans' Court and produced the note and some other assets He said, "I hold this note for these children—two-thirds of it—and the other one-third belongs to the widow. I have settled my account although it is not due, I have not the money in hand and cannot divide and distribute it, but two-thirds of this note belong to me as guardian, and I want to be discharged from this trust." And the court made an order discharging him from his trust as guardian on his turning over to the custody of the court all the assets in his hands. He then went his way. He had discharged his trust as executor and was relieved of his trust as guardian, and the court had all the property of the estate in its hands. These children were yet minors; it was probably the duty of the court to assign another guardian for them; but it was not done—probably they were not there, and the guardian could not be appointed in their absence. The court in the meantime took the custody of the property.

But some time after this guardian had been discharged by the court, and had left the country, the justice who was at that time holding the Orphans' Court, directed the register of wills, who had the actual custody of this property in his hands, to turn over this note to the widow. This was done, and she subsequently disposed of it and failed to account to the children for their share of it.

Now, these children have brought an action *devastavit* against Mr. May, in his capacity as executor, for the loss of this two-thirds of that note; a loss which would never have occurred if the court had kept the custody of the note. The court had it in its power to appoint a receiver to collect it, if it had seen proper. But instead of doing that, it directed, by some irregular order, the register to turn this note over to the widow, and there the injury was done. There was no injury done by the discharge of Mr. May from his trust as guardian, nor by taking the custody of the property into the hands of the court. The injury which was done followed from the act of the court in directing the register to turn this note over to the widow. Undoubtedly that was an irregularity, but it was an irregularity on the part of the court; and it ought not to affect the defendants in this case.

The defendant acted in good faith, and not only in good faith, but he acted according to law; and as the loss did not follow from any misconduct or negligence of his, but rather in consequence of an irregular order of a justice of this court, holding at that time the Orphans' Court, he ought not to be held liable.

We think it is perfectly clear that it was not in consequence of any conduct of this defendant that this note was lost to these children.

The judgment is therefore affirmed.

THE following speech of Judge OLIVER WENDELL HOLMES, JR., made at the late dinner of the Boston Bar, will be read with keen relish by all lawyers. Its spirit is most refreshing and commendable.

The court and the bar are too old acquaintances to speak much to each other of themselves or of their mutual relations. I hope I may say we are too old friends to need to do it. If you did not believe it already, it would be useless for me to affirm that in the judges' half of our common work the will at least is not wanting to do every duty of their noble office; that every interest, every faculty, every energy, almost every waking hour is filled with their work; that they give their lives to it, more than which they cannot do. But if not of the bench, shall I speak of the bar? Shall I ask what a court would be unaided? The law is made by the bar, even more than by the bench; yet do I need to speak of the learning and varied gifts that have given the bar of this State a reputation throughout the whole domain of

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the common law? I think I need not—nor of its high and and scrupulous honor. The world has its fling at lawyers sometimes, but its very denial is an admission. It feels what I believe to be the truth, that of all secular professions this has the highest standards.

And what a profession it is! No doubt everything is interesting when it is seen and seen in its connection with the rest of things. Every calling is great when greatly pursued. But what other gives such scope to realize the spontaneous energy of one's soul? In what other does one plunge so deep in the stream of life—so share its passions, its battles, its despair, its triumphs—both as witness and actor?

But that is not all. What a subject is this in which we are united! This abstraction called the law wherein as in a magic mirror, we see reflected, not only our own lives, but the lives of all men that have been. When I think on this majestic theme my eyes dazzle. If we are to speak of the law as our mistress, we who are here know that she is a mistress only to be wooed with sustained and lonely passion—only to be won by straining all the faculties by which man is likest to a god. Those who, having begun the suit, turn away uncharmed, do so either because they have not been vouchsafed the sight of her divine figure, or because they have not the heart for so great a struggle. To the lover of the law, how small a thing seem the novelist's tales of the loves and fates of Daphnis and Chloe. How pale a phantom even the Circe of poetry transforming mankind with intoxicating dreams of fiery aether and the foam of summer seas and glowing greensward, and the white arms of women! For him no less a history will suffice than that of the moral llife of his race. For him every text that he deciphers, every doubt that he resolves adds a feature to the unfolding panorama of man's destiny upon this earth. Nor will his task be done until, by the furthest stretch of human imagination, he has seen as with his eyes the birth and growth of society, and by the furthest stretch of reason he has understood the philosophy of its being. When I think thus of the law, I see a princess mightier than she who once wrought at Bayeux, eternally weaving into her web dim figures of the ever-lengthening past—figures too dim to be noticed by the idle, too symbolic to be interpreted except by her pupils, but to the discerning eye disclosing every painful step and every world-shaking contest by which mankind has worked and fought its way from savage isolation to organic social life.

But we who are here know the law even better in another aspect. We see her daily, not as anthropologists, not as students and philosophers, but as actors in a drama of which she is the providence and overruling power. When I think of the law as we know her in the court house and the market, she seems to me a woman sitting by the wayside, beneath whose overshadowing hood every man shall see the countenance of his deserts or needs. The timid and overborne gain heart from her protecting smile. Fair combatants, manfully standing to their rights, see her keeping the lists with the stern and discriminating eye of even justice. The wretch who has defied her most sacred commands, and has thought to creep through ways where she was not, finds that his path ends with her, and beholds beneath her hood the inexorable face of death.

Gentlemen, I shall say no more. This is not the moment for disquisitions. But when for the first time, I was called to speak on on such an occasion as this the only thought that could come into my mind, the only feeling that could fill my heart, the only words that could spring to my lips, were a hymn to her in whose name we are met here to-night—to our mistress—the Law.

Injunction in Advance of Legal Adjudication

In Earhardt v. Boaro (argued October Term, 1884, in the Supreme Court of the United States, decided March, 1885), the Supreme Court acted on the maxim that a court of equity may enjoin waste, &c., without waiting for the termination of litigation as to legal title, and gave this rule the clear sanction of reversing the decision in which the court below refused an injunction or dissolved an injunction, and remanded the case with directions to restore the injunction until final determination of the litigation at law.

Field, J., in delivering the opinion of the court, says: It was formerly the doctrine of equity, in cases of alleged trespass on land, not to restrain the use and enjoyment of the premises by the defendant when the title was in dispute, but to leave the complaining party to his remedy at law. A controversy as to the title was deemed sufficient to exclude the jurisdiction of the court. In Pittsworth v. Hopton (6 Vesey, 51), which was before Lord Eldon in 1801, he is reported to have said that he remembered being told in early life from the bench "that if the plaintiff filed a bill for an account and an injunction to restrain waste, stating that the defendant claimed by a title adverse to his, he stated himself out of court as to the injunction." This doctrine has been greatly modified in modern times,

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and it is now a common practice in cases where irremediable mischief is being done or threatened, going to the destruction of the substance of the estate, such as the extracting of ores from a mine, or the cutting down of timber, or the removal of coal, to issue an injunction, though the title to the premises be in litigation. The authority of the court is exercised in such cases, through its preventive writ, to preserve the property from destruction pending legal proceedings for the determination of the title. Jerome v. Ross, 7 Johns. Ch., 315, 332; Le Roy v. Wright, 4 Sawyer C. C., 530, 535. Compare Lacustrine, &c., Co. v. Lake Guano Co., 82 N. Y., 476, aff'g 19 Hun, 47.—*N. Y. Daily Register.*

Supreme Court Pennsylvania.

HERMAN *vs.* RINKER.

A judgment entered on a note with a warrant of attorney more than ten years old will be opened if there was not an affidavit filed on its entry, in accordance with the rules of court.

A note, although barred by the Statute of Limitations, should be admitted as the beginning of plaintiff's proof.

Error to the Court of Common Pleas of Wyoming county.

Opinion by PAXSON, J. Filed April 14, 1884.

The judgment was entered in this case by virtue of a warrant of attorney against two of the three makers of a promissory note. The third was dead when the judgment was entered and, as to him, the warrant was a nullity. The note was not under seal, was dated July 1, 1867, and the judgment was entered August 15, 1881, without a compliance with the rule of court, which requires an application to the court in term time, or to a judge in vacation, for leave to enter judgment where the warrant is over ten and under twenty years old; which application must be founded upon an affidavit of the due execution of the warrant or written power, and that the money is unpaid. A motion was subsequently made in the court below, upon the application of Abraham Rinker, one of the defendants, to strike off the judgment. This motion was refused. The court, however, opened the judgment as to both the defendants, for the sole purpose, as appears from the record, to let in the pleas of the Statute of Limitations. There was a time when the statute was regarded with so much disfavor that it was said in Brown v. Sutter, 1 Dallas, 239, that the court would never open a regular judgment to let in the plea of the Statute of Limitations; but, as was held by Chief Justice Gibson, in the later case of Eckel v. Snively, 3 W. & S., 272: "As the plea of that statute has since been considered in Schock v. McChesney, 4 Yates, 507, and the Bank v. Israel, 6 S. & R., 294, to be no longer an unconscionable one, the rule of practice would hardly be held so now." And there seems a propriety in the present case of opening the judgment to let in a plea of the statute, inasmuch as the judgment was entered without leave of court, or the affidavits required thereby, upon a note which, upon its face, was then barred by the statute. In any event, it was a matter in the discretion of the court, and we see no error in opening the judgment. The first and second assignments of error are not sustained. Upon the trial, the plaintiff offered the notes in evidence, with the docket entries, showing the entering of the judgment, and the order of court opening the same. This offer the court rejected, upon the ground that the note was barred by the statute. We cannot sustain this ruling. It is no reassn for rejecting the note, that, upon its face, it was barred by the statute. It is true the Statute of Limitations, if pleaded, may bar it, but evidence may be given which will take it out of the operation of the statute, and this cannot be known until all the evidence is heard. Boygs v. Bard, 2 Rawle, 102. The plaintiff must make a beginning with his proof. The first step is to offer the note, and if he cannot take the first step he cannot get to the jury at all, although he may have abundant evidence to take the note out of the statute. And in such case, the action must be brought upon the original undertaking, and not upon the new promise; and when the statute is pleaded, the new promise is proved to show that the objection to the old promise has been waived: Yaw v. Kerr, 11 Wright, 333. Failing to get his note in evidence, the plaintiff renewed his offer and accompanied it with an offer to show a payment made by Abraham Rinker within six years. This would clearly take the note out of the statute as to him. The court rejected this offer also, partly upon the ground that there was a joint issue as to two defendants; that the evidence tolled the statute as to one of them only, and that there could be no judgment against the other; whereupon the plaintiff moved to amend the declaration in the feigned issue so as to declare against Abraham Rinker alone. The amendment was disallowed by the court. This, with the ruling out of the evidence referred to, put the plaintiff out of court. We think the amendment should have been allowed, and the evidence received. The pleadings were of the most informal character. After the jury had been called in the box it was discovered that no issue had been made up. It was then

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made up at bar; the note to stand for the declaration, and the defendant to plead the Statute of Limitations. It will thus be seen that the issue was made up as to one defendant against whom no judgment had been entered, and as to another defendant who did not ask to have the judgment opened. The issue should have been made up in the first instance as to Abraham Rinker. He was the only actor, and the case should have been tried as to him alone. The note was several as well as joint. The plaintiff was entitled to a judgment against him in the absence of a defence. Whether a judgment in his favor would discharge his promissors is a question with which we have no present concern. It might, perhaps, depend upon the character of his defence, as was said in Swarzey v. Parker, 14 Wright, 441. I do not see that the plaintiff can be deprived of his right to amend by reason of the informal nature of the pleadings. It was certainly a loose way of framing an issue, and is not to be commended. We think, however, that the ordinary rules of pleading should be applied in such cases, and no good reason is apparent why the amendment should not have been allowed.

Judgment reversed and *venire facias de novo* awarded.

Supreme Court of Kansas.

CITY OF EMPORIA *vs.* MARIA L. SCHMIDLING.

[Filed May 8, 1885.]

JOHNSTON, J.:

Negligence in Using Street.—The fact that a person uses a street or sidewalk after he has had notice that it is out of repair, is not necessarily negligence. Persons are not to be entirely debarred from the use of a street because it may be defective or somewhat dangerous, but where danger exists, and it is known, ordinary prudence would require of those using such street, greater vigilance and care, and caution corresponding to the danger, to avoid injury.

Evidence; Removing Defective Sidewalk.—In an action brought against a city to recover for personal injuries alleged to have resulted from a defective sidewalk, the fact that the walk in question was removed by the city authorities, and another and better one substituted therefor soon after the injury occurred, may be considered as a circumstance tending to show that the walk removed was out of repair, but it is no evidence that the city authorities had knowledge of the defect before the occurrence of the injury.

Sidewalks and Streets; Duty of Cities.—Incorporated cities are required to construct and maintain their streets and sidewalks in a reasonably safe and suitable condition for their intended use, and for the travel that usually passes over them; they are not held to put and keep them in an intrinsically perfect condition, nor are they answerable for injuries resulting from defects that reasonable care and diligence on the part of the city authorities could not have discovered and remedied.

Immaterial Error will not Reverse.—An error which works no injury or prejudice to the party complaining does not justify a reversal of the judgment.

Error from Lyon county. Judgment affirmed. All the justices concurring.

"SNOB PAPERS," by ADAIR WELCKER, is full of the most roaring fun, and there is not a page over which the reader will not laugh in the heartiest fashion. The work is a novel on a thoroughly original plan, and altogether unlike anything heretofore published. The scene is laid in San Francisco, Oakland and the surrounding country, and the characters are so thoroughly human that they will be understood and appreciated everywhere. Junius Oldbeigh, an old Forty-Niner, having accumulated vast wealth at the mines, comes to San Francisco, for the purpose of circulating among the snobs and being one of them. The traps that are laid to capture Mr. Oldbeigh or extort money from him, especially by designing females, bring about hosts of highly ludicrous complications, and there are wholesale exposures of San Francisco snobs and dudes replete with satirical humour. The book is without a heroine, but nevertheless numbers of young ladies attractive and scheming figure prominently in its pages, and give zest and spice to the comical narrative. Everybody should read "SNOB PAPERS," for as a bright, breezy romance of excessive drollery it has no equal. It is published in a large square duodecimo volume, paper cover, uniform with "Nana" and "L'Assommoir," price seventy-five cents in paper cover, or $1.25 bound in morocco-cloth, and will be found for sale by all booksellers and news agents, or will be sent post-paid, on receipt of the price of the edition wished, by the publishers, T. B. PETERSON & BROS., Philadelphia, Pa.

WHERE a daughter receives a gift of land from her father when insolvent, a Court of Equity will allow for valuable improvements made bona fide by husband of daughter, upon the bill filed to compel a reconveyance. [Skiles, Administrator's Appeal. S. C. Pa., June 1, 1885.]

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NOTES OF RECENT DECISIONS.

Statute of Limitations: Pleading New Promise.—The defendant became indebted to the plaintiff for services rendered in making a sale of lands. On July 26, 1875, the defendant paid the plaintiff on account, and requested him "to wait for the payment" of the remainder until he had concluded the trade in which the debt was created, to which he agreed. The defendant concluded the trade January 7, 1884, and January 12, 1884, the plaintiff demanded of the defendant payment of the amount remaining unpaid, with legal interest from June 1, 1875, which was refused. *Held*, That the claim was barred by the Statute of Limitations. There was no consideration for the plaintiff's promise to delay action in the premises; the claim was payable when the services were rendered, and from the time the plaintiff's right to sue commenced, the statute commenced to run. In pleading a new promise or acknowledgment, or agreement, from which such promise will be implied, it need not be alleged that the same was made in writing; but that fact will be presumed until the contrary is shown. [Green v. Coos Bay Wagon Rd. Co. C. C. U. S., Dist. of Oregon. Opinion by Deady, J. 17 Chicago Leg. News, 239.]

Partnership: Sale of Good-Will; Injunction.—(1) M., a member of a firm at Kalamazoo, and doing business under the name of Kalamazoo Wagon Company, composed of himself, H., L. and L.'s wife, for an adequate consideration purchased of his partners all of their interest "in the property, assets, money, good-will, and all other property, of every name and nature, in and to the firm of Kalamazoo Wagon Company," and continued the business under the old name. L. and other parties organized a corporation under the name of Kalamazoo Buggy Company, located their place of business in the immediate vicinity of M., and sent out circulars soliciting business, resembling the circulars in use by him, and thus interfering with and injured his business and trade. *Held*, That under the contract of sale M. was entitled to the good-will of the business purchased; that L. was guilty of a breach of contract; and that he and the other members of the corporation should be perpetually enjoined from using the name of Kalamazoo Buggy Company, or the circulars resembling those used by M., in the transaction of their business. Beal v. Chase, 31 Mich., 490. (2) The decree of the circuit court, in addition to enjoining defendants from use of the name of Kalamazoo Buggy Company, and the use of the circulars resembling M.'s circulars, enjoined defendants from receiving mail from the post office addressed to the Kalamazoo Buggy Company, with a provision requiring M. to deliver to defendants any mail received by him and intended for defendants, or either of them. *Held*, That this part of the decree was erroneous, and could not be sustained. [Myers v. Kalamazoo Buggy Co., 30 Alb. L. J., 517. Opinion by Gooley, C. J.]

Railroad Ticket, obtained from R. R. Co. by Fraud, but used by Innocent Purchaser, Invalid.—1. When the possession of a railroad passenger ticket, which entitles the holder to one first class passage between points named therein, has been fraudulently obtained from the company, a person purchasing such ticket from the holder thereof, although for value and without notice of equities, acquires no title thereto.

2. An agent, authorized to sell such tickets and stamp and deliver the same upon receiving pay therefor, cannot bind his company by stamping and delivering such tickets, without the knowledge or consent of its proper officers, to a third person, to be sold by him and to be paid for when sold. [Frank v. Ingalls, receiver, etc. Sup. Ct. Ohio. Sept. 30, 1884.]

Libel: Criticising Management of Case by Physician; Publication, when Actionable per se.—Where the words employed in a publication in a newspaper, in stating the conduct of a physician in a particular case, only impute to him such ignorance or want of skill as is compatible with the ordinary or general knowledge and skill in the same profession, they are not actionable *per se*. But where the words so employed in detailing the action of the physician in a particular case, taken together, are such as fairly impute to him gross ignorance and unskillfullness in such matters as men of ordinary knowledge and skill in the profession should know and do, then they necessarily tend to bring such physician into public hatred, ridicule, or professional disrepute, and hence are actionable *per se*. Publication *held* libelous *per se*.

Void Tax Sale: Purchaser; Subrogation.—Where a purchaser at a void sale of real estate for taxes pays the taxes legally levied upon the real estate for subsequent years, upon a failure of his title, he will be subrogated to the rights of the county to the extent of the legal taxes so paid by him, with legal interest, even though the taxes upon which the sale was had were void by reason of the default of the assessor in not filing the proper oath with the assessment roll. [Merriam v. Hemple. S. C. Neb. March 17, 1885; 22 N. W. Rep., 775.]

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Repeal of Statute.—A statute can be repealed only by express provisions of a subsequent statute, or by necessary implication. To repeal by implication there must be such a positive repugnancy between the new law and the old one, that they cannot stand together, or be consistently reconciled. A statute cannot be repealed by *non user*. [Homes v. Commonwealth. Sup. Ct. Penn. 42 Legal Intel., 131.]

Non-Protest of Note by Notary.—The owner of a domestic note left it with a bank for collection, and if not collected, to fix the liability of an indorser. It not having been paid at maturity, the bank, according to a general usage of the place, handed it to a reputable notary for presentment and protest. *Held*, That the notary was the sub-agent of the owner of the note, and the bank is not answerable for a default of the notary in making presentment for payment, whereby the liability of the indorser was released. [Bank of Gallipolis v. Butler. Sup. Ct. of Ohio. Opinion by Martin, J. 13 Law Bul., 421.]

Mutual Insurance: Assessments; Forfeiture.—The law regards mutual benevolent associations in the light of insurance companies, and where the articles of association declare that, where a member neglects to pay an assessment for more than thirty days after notice, he shall forfeit all his rights in the association, the fact that a member was sick and unable to attend to business for a part of the thirty days, will not avoid the forfeiture. [Yoe v. Howard Masonic Mut. Ben. Ass'n. Maryland Ct. of App. 14 Md. L. Rec., 27.[

Husband and Wife: Divorce; Service; Testimony of Wife.—Where the service of a libel in divorce is not personal, the libellant is not a competent witness against her husband, and in absence of other evidence, a divorce cannot be decreed. [Gilbert's Appeal. Feb. 2, 1885. 15 W. N. C., 466.]

The Courts.

SUPREME COURT OF THE DISTRICT OF COLUMBIA

GENERAL TERM.

June 1, 1885.

Gibbons v. Mahon. Bill dismissed.
Jones v. B. & P. R R Co. Judgment for plaintiff.
Flannery v. B. & O.R. R.Co. Judgment below affirmed, but reducing verdict for plaintiff $5,500 or new trial.
Gross v. Goldsmith. Decision below overruled.
Scheutzen Park Company v. Schmidt. Argued and submitted.
Scott v. Met. R. R. Co. Argued and submitted.
Henderson v. B. & O. R. R. Co. Motion to dismiss bill overruled.

June 2, 1885.

Same. Argued and submitted.
Emerson v District of Columbia. Argued and submitted.
State of Maryland, use of Mary Ann Price v. B. & O. R. R. Co. Demurrer to declaration sustained

June 3, 1885.

Fendall v Albers. Judgment below affirmed.
Cotharin v. Davis. Argued and submitted.
Johnson v District of Columbia. Demurrer to third count overruled and defendant allowed to plead thereby.

June 4, 1885.

Hine v. Magarity Judgment of special term affirmed.
Emmart et al. v. Evans, administrator. Decree below affirmed.

June 5, 1885.

Hine v. Magarity. On argument.
Rich, assignee, v. Henry. Argued and submitted.

PROBATE COURT.—Justice Hagner.

June 2, 1885.

Estate of Robert Barry; will filed for probate.
Estate of James F. Kines; petition of widow for letters of administration.
Estate of A. H. Pickrell; answer of Mary E. Pickrell filed.
Estate of Anna A. C. Felter; petition of guardian to exceed income.
Estate of Margaret Bain; will admitted to probate and letters granted W. R. Woodward; bond, $3,000.
Estate of Ed. Semmes; Friday, July 3, appointed for settlement.
Estate of B. Berens; final account of executor received.

June 4, 1885.

Estate of William Acton: June 26 next appointed for final settlement.
Estate of Benjamin M. McCoy; June 26 next appointed for final settlement.
Estate of Sarah A. Redman; June 26 next appointed for final settlement.
Estate of Wilhelm Bandel; petition of James L. Norris for letters of administration.
Estate of Mary C. McDonnell; petition of Mary E. Taylor for probate of will and that letters issue to F. M. Cox and G. E. Hamilton.
Estate of Gurden Snowden; will filed for probate and order of publication returnable July 3, 1885
Estate of John C. Ramsden; Henty C. Hazard appointed administrator; bond, $1,000.
Estate of Hanson Brown; order directing distribution of funds paid into court.
Estate of H. R. Taylor; Henry Polkinhorn ordered to pay over distribution balance to Georgeanna C. Bird.
Estate of John McClelland; order to sell steam yacht.
Estate of Caroline B. Hornblower; will admitted to probate and Joseph P. Bradley granted letters on bond of $3000.
Estate of James F. Kines: Amanda Kines appointed administratrix.
Estate of John E. Thompson; will admitted to probate and letters garnted to Elizabeth Thompson on bond of $1000

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 5th day of June, 1885.

ABRAHAM KROON
v.
SARAH KROON. } Equity Docket 24. No 9295.

On motion of the plaintiff, by Mr. J. Ambler Smith, his solicitor, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 23 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, June 5th, 1885.

In the matter of the Estate of William Bowles, late of the District of Columbia, deceased

Application for Letters of Administration on the estate of the said deceased has this day been made by James Bellew, to be issued to Frederick W Ritter, jr.

All persons interested are hereby notified to appear in this court on Friday, the 26th day of June next at 12 o'clock, m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test; 26 H. J. RAMSDELL. Register of Wills.
H. B. MOULTON, Solicitor.

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Legal Notices.

THIS IS TO GIVE NOTICE,

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administratian on the personal estate of Serafino Velati, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of June, 1885.

JOSEPH J. DARLINGTON,
R. ROSS PERRY, Solicitor. 23 Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

JOHN A. HAMILTON et al. v. RICHARD H. CLAKE et al. } No. 9063. Equity.

John A. Hamilton and Frank D. Orme, trustees, herein, having reported a sale of north half of lot 15, square 347, to James L Barbour, for $6,900; and the part of lot 14, square 348, described in this suit, to Frank Teuber, for $5,040, all in Washington City, District of Columbia.

It is, this 6th day of June, 1885, ordered, that said sales be confirmed, unless good cause to the contrary be shown on or before the 6th day of July, 1885. Provided, a copy of this order be published in the Washington Law Reporter for three successive weeks before said day.

A. B. HAGNER.
A true copy. Test: 23 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. June 5th, 1885.

In the case of David Warner and John L. Hickman. Executors of Benjamin M. McCoy, deceased, the Executors aforesaid have, with the approval of the Court appointed Friday, the 26th day of June, A. D. 1885, at 11 o'clock, a. m., for making payment and distribution under the court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

Test: 23 H. J. RAMSEELL, Register of Wills.
JAMES H. SMITH, Solicitor,

IN THE SEPREME COURT OF THE DISTRICT OF Columbia, Holding a Special Term for Orphans' Court Business. June 5th, 1885.

In the case of Emma Frances Quinlan, Executrix of Sarah A. Redman, deceased, the Executrix aforesaid has, with the approval of the Court appointed Friday, the 26th day of June, A. D 1885, at 11 o'clock, a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executrix will take the benefit of the law against them Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 23 H. J RAMSDELL, Register of Wills.
SAMUEL C. MILLS, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Holding a Special Term for Orphans Court Business.

In re estate of Wilhelm Bandel, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by James L Norris.

All persons interested are hereby notified to appear in this court on Friday, the 3d day of July next at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B. HAGNER, Justice.
5th June 1885. True copy. Test: H. J. RAMSDELL,
23 Register of Wills.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Holding a Special Term for Orphans' Court Business. June 6th, 1885.

In the case of Charles Abert, Executor of Robert H. Wyman, deceased, the Executor aforesaid has, with the approval of the Court appointed Friday, the 26th day of June, A D. 1885, at 11 o'clock, a. m., for making payment and distribution under the Court's direction and control; when and where creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person oa by agent or attorney duly authorized with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

Test: 23 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. June 5th, 1885.

In the case of Morris Keim, Administrator of Wm. Acton, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 26th day of June, A. D. 1885, at 11 o'clock a m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided. a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 23 H. J. RAMSDELL, Register of Wills.
JOHN B. LARNER, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. The fifth day of June, 1885.

In the matter of the Estate of Mary C. McDonnell, late of the District of Columbia, deceased.

Application has been this day made for the Probate of the last Will and Testament and that Letters of Administration with the will annexed on the estate of the said deceased be granted to F. Marcellus Cox, of Maryland and George E. Hamilton, of said District.

All persons interested are hereby notified to appear in this court on Monday the 6th day of July next at 12 o'clock, m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration with the will annexed on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 23 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 6th day of June, 1885.

LILLIAN A. ALLMAN v. FRANCIS J. ALLMAN. } No. 9474. Eq. Doc. 24.

On motion of the plaintiff, by Mr. J. J. Darlington, her solicitor, it is ordered that the defendant, Francis J. Allman, cause his appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
True copy. Test: 23 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business June 5, 1885.

In the matter of the Will of Gurden Snowden, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Sarah Snowden.

All persons interested are hereby notified to appear in this Court on Friday, the 3d day of July next at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 23 H. J. RAMSDELL, Register of Wills.
JAS. H. SMITH, Solicitor.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t a. on the personal estate of Virginia Taylor, late of the District of Columbia, deceased.

All persons having claims again the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 22d day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of May, 1885.

23 VIRGINIA TAYLOE LEWIS,
HENRY WISE GARNETT, Solicitor Administratrix c t a.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John McClelland, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 29th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of May, 1885.

23 JOHN McCLELLAND, JR.,
HENRY WISE GARNETT, Solicitor. Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

MARY ANN ROTH
v.
GEORGE W. ROTH et al. } No. 8890. Eq. Doc. 23.

Upon consideration of the report of John F. Hanna and Irving Williamson, trustees, this day filed, it is this 1st day of June, ordered that the sales of lot 5 of Davidson's subdivision of lots in square No. 341, to William F Free, for the price of $3401.30, and of part of original lot 3, in square No. 515. to Mary Ann Roth, for the price of $3000, be, and the same are, hereby ratified and confirmed, unless cause to the contrary thereof be shown on or before Monday, the 22d day of June, 1885. Provided a copy of this order be published in the Washington Law Reporter once a week in each of three successive weeks before the said date.

A. B. HAGNER, Justice.
True copy. Test: 23 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 28th day of May, 1885.

FANNIE L. TAYLOR
v.
WILLIAM B. TAYLOR. } No. 9467. Eq. Doc. 24

On motion of the plaintiff, by Mr. John Cruikshank, her solicitor, it is ordered that the defendant, Wm. B. Taylor, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 23 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. June 2d, 1885.

In the case of Catharine Virginia Simms and Wm. J. Warren, Exr's of Edward Simms, the Ex'rs aforesaid have, with the approval of the Court, appointed Friday, the 3d day of July, A. D. 1885 at 11 o'clock a. m, for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 23 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

SAMUEL M. CASTELL
v.
JOHN H. CASTELL et al. } 6894. Eq. Doc. 19.

On hearing the report of Joseph F. Hodgson, trustee, it is, this 5th day of of June, 1885, ordered, that the sales reported by said trustee, be confirmed unless cause to the contrary be shown on or before the 5th day of July, 1885; Provided that a copy of this order be published in the Washington Law Reporter once a week for three weeks before said day.

The report states the amount of sales to be $3,800.

By the Court. A. B. HAGNER.
A true copy. Test: 23 R. J. MEIGS, Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 1st day of June, 1885.

J. DAVENPORT WHEELER,
Complainant,
v.
WILLIAM SHARON et al.
Defendants. } No. 9469. Eq Doc. 24.

On motion of the complainant, by Mr. Reginald Fendall, his solicitor, it is ordered that the defendants William Sharon and Sarah Althea Hill, otherwise Sarah Althea Sharon, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
True copy. Test: 23 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia. Holding a Special Term in Equity.

GARDNER G. HUBBARD.
Complainant,
v.
GERTRUDE H. GROSSMANN et al.,
Defendants. } No. 9274.

The trustee in this cause, Charles James Bell, having reported to the Court that he has sold the equity in lot numbered fifty-four (54) of Thomas Sunderland's subdivision of square one hundred and fifteen (115) in the city of Washington, as recorded in the office of the surveyor of the District of Columbia in liber ten (10) folio fifty-three (53) to Gertrude H. Grossmann, for the sum of thirty-five hundred dollars ($3500.00); and that the said purchaser has complied with the terms of sale and is desirous of paying all the purchase money in cash: It is, this 2d day of June, A. D 1885, ordered, that the said sale be finally ratified and confirmed, and the trustee then allowed to accept all the purchase money in cash, unless cause to the contrary be shown on or before the 2d day of July, A. D 1885 Provided a copy of this order be published in the meantime once a week for three successive weeks in the Washington Law Reporter.

A. B. HAGNER.
A true copy. Test: 23 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

RUDOLPH EICHHORN
v.
MARIA F. CONLAN et al. } No. 5181. Equity.

Wm. F. Mattingly, trustee, having reported to the Court that pursuant to the decree, he sold at public auction on May 14th, 1885, to the several purchasers named in said report, said lots, Nos. 47 to 68, both inclusive, in square No. 621, in the city, for the aggregate sum of $11,365 75, it is this 1st day of June, A. D. 1885, ordered, that the complainant is hereby excused from complying with the terms of sale as to the lots purchased by him, and that all of said sales be finally ratified and confirmed on the seventh day of July, 1885, unless cause to the contrary be shown before said day. Provided, this order be published in the Washington Law Reporter once a week for three successive weeks prior to said day.

A. B. HAGNER.
A true copy. Test: 23 R. J MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 3d day of June, 1885.

J. B. BRYAN & BRO.
v.
JEREMIAH HARALSON } No. 26,144. Law.

On motion of the plaintiffs, by Mr. E. H. Thomas, their solicitor, it is ordered that the defendant, Jeremiah Haralson cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. W. S COX, Justice
True copy. Test: 23 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of Charles H. Manning, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 3rd day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 3d day of June, 1885.

ELIZABETH B. MANNING,
Administratrix c. t. a.
23 57 D St., N. E.

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Legal Notices.

TRUSTEES SALE OF VALUABLE SUBURBAN PROPERTY. IMPROVED BY DWELLING HOUSE, STUDIO, FOUNDRY, &c., BELONGING TO THE ESTATE OF THE LATE CLARK MILLS. THIS PROPERTY HAS RECENTLY BEEN SUBDIVIDED INTO TWELVE PARCELS, CONTAINING THREE TO NINE ACRES RESPECTIVELY, AND FRONTING RESPECTIVELY, ON BLADENSBURG OR COLUMBIA TURNPIKE, B & O R. R., BRENTWOOD AND QUEEN'S CHAPEL ROADS.

By virtue of a decree of the Supreme Court of the District of Columbia, passed in Equity Cause No. 9042, docket 24, the undersigned, as trustees in said cause, will offer for sale on the premises, on THURSDAY, THE EIGHTEENTH DAY OF JUNE, A. D 1885, commencing at ONE O'CLOCK P. M., all that parcel of land and premises known as Meadow Bank Spa Springs property, and formerly occupied by the late Clark Mills, containing 68.42-100 acres which has been subdivided by us into twelve lots.

Lot 1, containing 5.75-100 acres, fronting on Columbia turnpike and B. & O. R. R., improved by comfortable Frame Dwelling and outhouses. This lot has the celebrated "Spa Spring" on it.

Lot 2, containing 6.34-100 acres fronting on Columbia turnpike. improved by large barn

Lot 3, containing 3 04-100 acres. fronting on B. & O. R. R., improved by brick studio.

Lot 4, containing 3 31-100 acres, fronting on B. & O. R. R., and on a new road made by the Trustees.

Lot 5, containing 5.92-100 acres, fronting on B & O. R. R., and on New Road, impoved by large Foundry (brick, stone and frame.)

Lot 6, containing 3.57-100 acres, fronting on the New Road.

Lot 7, containing 4 49-100 acres, fronting on the New Road

Lot 8, containing 5 66-100 acres, fronting on the New Road

Lot 9, containing 6.35-100 acres, fronting on the New Road.

Lot 10, containing 7.21-100 acres, fronting on Brentwood Road and on the New Road.

Lot 11, containing 6 45-100 acres, fronting on Brentwood Road and on the New Road.

Lot 12, containing 7 33-100 acres, fronting on Queen's Chapel Road.

This property is one of the best situated in the District, being within fifteen minutes drive of the city, access to which is had by two roads and by the B. & O. Railroad and adjacent to the National Fair Association Grounds, and will make splendid Villa Sites. It can readily be subdivided into smaller Building Lots.

Terms of sale, as prescribed by the decree: One-third (⅓) of the purchase money cash in hand; and the residue on a credit of (1) one and (2) two years, in equal installments, and the purchaser will be required to give his notes, bearing six per cent. interest, with a deed of trust upon the property to secure the deferred installments, unless the purchaser in any case prefers to pay cash, in which case the trustees are authorized to receive the same instead of taking the notes and deed of trust. Conveyances to be made upon the confirmation of the sales by the court.

To insure good faith on the part of the purchasers, One Hundred Dollars of the cash payment upon each Lot as sold will be required to be deposited at the time of sale. Plats of the Property as subdivided can be obtained of either of the Trustees, or at the office of the auctioneers.

Parties desiring to attend sale will take train leaving Baltimore and Ohio Railroad depot (New Jersey avenue) at 12.10 p. m. for "Mills'" station

C. C. COLE,
468 Louisiana ave.,
T. A. LAMBERT,
410 5th st. n. w.,
S. T. THOMAS,
452 D st, n. w.,
Trustees.

23-3
DUNCANSON BROS., Auctioneers.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of Delilah Clark, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of May, 1885.

23 RICHARD H. GOLDSBOROUGH,
HENRY WISE GARNETT, Solicitor. Administrator c.t.a.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

THE UNITED STATES OF AMERICA
v.
SAMUEL S. SMOOT et al. } Equity. No. 4944.

Randolph Coyle, trustee herein, having reported that he has sold to Horace F. Page at and for the price of fifteen thousand four hundred and fifty dollars ($15,450.00) Lot 12 in Kidwell's subdivision of Square No. 217, it is by the court this 19th day of May, A. D. 1885, ordered that the said sale be ratified and confirmed unless cause to the contrary be shown on or before the 18th day of June, A. D. 1885. Provided, that a copy of this order be published in the Washington Law Reporter for three successive weeks prior to said last mentioned date.

A. B. HAGNER.
A true copy. Test: 21 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Thomas B. Medary, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 27th day of May next; they may otherwise by law be excluded from all benefit of the said estate,

Given under my hand this 27th day of May, 1885.

KITTIE W. MEDARY.
EDWARDS & BARNARD Solicitors. 22 Executrix.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Catharine Morgan, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 27th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of April, 1885.

DAN'L P. MORGAN,
F. P. B. SANDS, Solicitors. 22 Administrator.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Eliza Miles, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 28th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of May, 1885.

HENRY BAILEY,
ROBT. J. MURRAY, Solicitor 22 Executor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

JOHN T. S CROGGON et al.
v.
SAMUEL AMERY et al. } No. 9093. Equity.

James S. Edwards, trustee herein, having reported a sale of part of lot 3, square 494 (particularly described in the proceedings herein) in Washington City, in the District of Columbia, to William Henery, for $3,060.

It is this 27th day of May, 1885, ordered, that said sale be confirmed, unless good cause to the contrary be shown on or before the 27th day of June, 1885. Provided a copy of this order be published in the Washingcon Law Reporter once a week for three successive weeks before said day.

A. B. HAGNER,
A true copy 22 Test: R. J. Meigs, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

ELIZA C. JACKSON et al.
v.
ELIZABETH L. JACKSON et al. } No. 9395. Equity.

William H. McElfresh, the trustee herein, having reported a sale of lot 5, in square 871, in Washington City, in the District of Columbia, to Charles C. Meads, for $3,000.

It is this 27th day of May 1885, ordered, that said sale be confirmed, unless good cause to the contrary be shown on or before the 27th day of June 1885. Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said day.

A. B. HAGNER.
A true Copy. Test: 22 R. J. MEIGS, Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Holding a Special Term for Orphans' Court Business. May 28th, 1885.

In the case of Andrew J. Taylor, Executor of Ann or Annie E. Rotchford, dec'd, the Executor aforesaid has, with the approval of the Court, appointed Friday the 19th day of June, A. D. 1885, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test 22 H. J RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, May 22d, 1885.

In the matter of the Estate of Charles R. Clifton, late of the District of Columbia, deceased

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Katie Clifton.

All persons interested are hereby notified to appear in this court on Friday, the 12th day of June next at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test; 21 H. J. RAMSDELL. Register of Wills.

O. T. THOMPSON, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 29th, 1885

In the case of Reginald Fendall, Administrator of Gilbert M. Wight, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 26th day of June, A. D. 1885, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter and in The Evening Star previous to the said day.

Test: 22 H J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business. May 29th, 1885.

In the case of Edward Derrick, Administrator of William S. Derrick, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 26th day of June, A. D. 1885, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 22 H. J- RAMSDELL. Register of Wills.

GORDON & GORDON, Solicitors.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 29th, 1885.

In the case of John Mitchell, Administrator of David Welsh, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 26th day of June, A. D. 1885, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 22 H. J. RAMSDELL, Register of Wills.

JOHN A. HAYWARD, Solicitor.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Sarah Swift, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 19th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of May, 1885.

GEORGE W. BONNELL,

WM T. BALEY, Solicitor. 21 Executor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Elizabeth Margaret Jones, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of May, 1885.

20 GEO. T. JONES, Executor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business. May 28th, 1885

In the case of Benj. F. Leighton, Administrator of Daniel S. Jones, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 26th day of June A. D. 1885, at 11 o'clock, a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 22 H. J. RAMSDELL, Register of Wills.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration on the personal estate of Mary Jane Martin, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of May, 1885.

ELIZA E. THORN,

A. B. DUVALL, Solicitor. 21 Admistratrix.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Mary C. Young, late of the District of Columbia, deceased

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 22d day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of May, 1885

IGNATIUS F. YOUNG,

WM. W. BOARMAN, Solicitor. 22 Executor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, this twenty first day of May, 1885.

ROBERT J. CAMPBELL
v.
SARAH CAMPBELL. } In Equity. No. 9458.

Application for divorce on the ground of desertion.

On motion of the plaintiff, by Thomas J. Mackey, his solicitor, it is ordered that the defendant, Sarah Campbell, cause her appearance to be entered herein on or before the first rule-day, occurring forty days after this day; otherwise the cause will be proceeded with as in case of default,

By the Court. A. B HAGNER, Justice.

True Copy. Test: 22 R. J. MEIGS, Clerk.

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Legal Notices.

THIS IS TO GIVE NOTICE

That the subscribers, of Washington, D. C. and Lancaster, Pa., respectively, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Rebecca Reynolds, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 16th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 16th day of May, 1885.

REBECCA REYNOLDS KRUG,
JOHN F. REED.

F. P. B. SANDS, Solicitor. 21

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of John E. Kendall, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of May, 1885.

JOHN BLAKE KENDALL,

EDWARDS & BARNARD, Solicitors. 21 Executor.

THIS IS TO GIVE NOTICE:

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Sophia Bender, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of May next: they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 1st day of May, 1885.

SUSAN L. DUBANT,
902 Sixth street, N. W.

21 Administratrix

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Bell W. Deal, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of May, 1885.

21 G. H. SLAYBAUGH, Executor

THIS IS TO GIVE NOTICE.

That the subscriber, of Washington City, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John W. Tucker, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of April, 1885.

ALBERT F FOX,

HOSEA B. MOULTON, Solicitor. 21 Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 22d, 1885.

In the matter of the Estate of Nora Maclay, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by R. Ross Perry.

All persons interested are hereby notified to appear in this court on Friday, the 12th day of June next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 21 H. J. RAMSDELL, Register of Wills.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, the 22d day of May, 1885.

In the matter of the Estate of George Taylor, late of Washington City, District of Columbia, deceased.

The petition of Jno. St. C Brookes asking that Letters of Administration with the will annexed on the estate of the said deceased may be granted to Julian T. Burke, of Alexandria, Va., having been heretofore made to this court.

All persons interested are hereby notified to appear in this court on Friday, the 12th day of June next at 11 o'clock, a. m., to show cause why Letters of Administration with the will annexed on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to said day.

By the Court. A. B. HAGNER. Justice.
A true copy Test: 21 H. J. RAMSDELL,
Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 29th, 1885.

In the matter of the Estate of Hunter Brooke, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Louisa H. Bailey and Lorenzo A. Bailey, of Greensboro, N. C.

All persons interested are hereby notified to appear in this court on Friday, the 26th day of June, next, at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B HAGNER, Justice.
Test: 22 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 29, 1885.

In the matter of the Will of Michael Caton, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration cum testamento annexo on the estate of the said deceased has this day been made by Mary Caton, a daughter of said decedent.

All persons interested are hereby notified to appear in this court on Friday, the 26th day of June next, at 12 o'clock, m., to show cause why the said Will should not be proved and admitted to Probate and Letters with will annexed on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B HAGNER, Justice.
Test: 22 H. J. RAMSDELL, Register of Wills.
CHAS. A. ELLIOT, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

THE NATIONAL UNION INSURANCE CO. v. JOHN B. TYLER ET AL. } No. 8664. Eq. Doc 23

The trustee in this case, John C. Heald, having reported to the court that he has sold sub lots six (6), seven (7), eight (8), nine (9), ten (10) and eleven (11) and part of original lot one (1) in square numbered six hundred and thirty (630) to Andrew Wylie, for six thousand eight hundred and sixteen 38-100 dollars ($6,816 38). It is, this 22d day of May, 1885, ordered, that said sale shall be finally ratified unless cause to the contrary be shown on or before the 22d day of June, 1885. Provided, a copy of this order be published, in the meantime, once a week for three successive weeks in the Washington Law Reporter and the Evening Star.

A B HAGNER.
A true copy. 21 Test: R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Julia T. Miller, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of May, 1885.

ELIZABETH A MCEVOY,

WM. J. MILLER, Solicitor. 21 Executrix.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Cont Business. May 29th, 1885.

In the matter of the Estate of Mary Buckley late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased, has this day been made by Phœbe E. Livermore.

All persons interested are hereby notified to appear in this court on the 26th day of June next at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test 22 H. J. RAMSDELL, Register of Wills.
FRANKLIN H MACKEY, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 29th, 1885.

In the matter of the Estate of Antoinetta E Beecher, late of the District of Columbia, deceased

Application for Letters of Administration on the Estate of the said deceased has this day been made by Hosea B. Moulton.

All persons interested are hereby notified to appear in this court on Friday the 26th day of June next at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 22 H. J. RAMSDELL, Register of Wills

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 29th, 1885.

In the matter of the Estate of Alexander Campbell, late of the City of Boston; Mass., deceased.

Application for Letters of Administration d. b. n. on the Estate of the said deceased, has this day been made by Frederick L. Moore.

All persons interested are hereby notified to appear in this court on Friday, the 26th day of June, 1885, at 10 o'clock a. m., to show cause why Letters of Administration d. b n. on the estate of said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 22 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 27th day of May, 1885.

WM. TAYLOE SNYDER, Trustee, v. ADELAIDE E. BAKER et al. } No. 9464. Eq. Doc. 24.

On motion of the plaintiff, by Mr. Charles D. Fowler, his solicitor, is it ordered that the defendants, Adelaide E. Baker, Sarah G. Penasco de Gale, Norberk Penasco de Gale, R. Carter Wellford, B. Randolph Wellford, Armistead N. Wellford, Virginia T. Lewis, administratrix w. a., Virginia T. Lewis, Henry G. Lewis, Trapiere S. Lewis, Etta T. Key, Etta T. Smith; Joseph Hall Key, Charles E. Key, Harriet H. Key and all unknown heirs of H. G. S. Key and Henrietta H., his wife, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 22 R J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business. May 29th, 1885.

In the matter of the Will of Zelina Root, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by William Cranch McIntyre, one of the executors.

All persons interested are hereby notified to appear in this Court on Friday, the 26th day of June next, at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B HAGNER, Justice.
Test: 22 H. J. RAMSDELL, Register of Wills.
C. C. COLE, Solicitor.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 22d, 1885.

In the case of Henry L. Rose and Benjamin F. Larcombe, Administrators of George H Larcombe, deceased, the administrators aforesaid have, with the approval of the court, appointed Friday, the 12th day of June, A. D. 1885, at 11 o'clock a m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Administrators will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 21 H. J. RAMSDELL, Register of Wills

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 22d, 1885.

In the matter of the Estate of Caleb Gardner, late of Newport, State of Rhode Island, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration with the will annexed on the estate of the said deceased has this day been made by William F. Gardner and Cazenove G Lee.

All persons interested are hereby notified to appear in this court on Friday the 12th day of June next at 12 o'clock, m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration with the will annexed on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 21 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 20th day of May, 1885.

IDA MAY STANSBURY et al v. FRANK INGLEHART et al. } No 7781. Eq. Doc. 21.

On motion of the plaintiffs, by Mr. J. J. Darlington, their solicitor, it is ordered that the defendant, Annie H. Grell, cause her appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
True copy. Test: 21 R J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 21st day of May, 1885.

JOHN CONDON v. SUSAN CONDON. } Equity. No 9453.

On motion of the complainant, by Mr. Jas. McD. Carrington, his solicitor, it is ordered that the defendant, Susan Condon, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A B HAGNER, Justice.
A true copy. Test: 21 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business May 18th, 1885.

In the matter of the Estate of Rollins Thorne, late of Peru in South America, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by John F Ennis.

All persons interested are hereby notified to appear in this Court on Friday, the 12th day of June next at 11 o'clock, a. m, to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 21 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 18h day of May, 1885.

JOSEPH W. BABE v. CHRISTOPHER C. KIBBLE et al. } No. 9435. Eq. Doc. 24

On motion of the plaintiff, by Mr. Kimball, his solicitor, it is ordered that the defendant, Annie Kibble, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
True copy. Test: 21 R. J. MEIGS, Clerk.

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Washington Law Reporter

WASHINGTON - - - - - - - - June 18, 1885.

GEORGE B. CORKHILL - - - EDITOR

THE *Central Law Journal* (No. 21) publishes letters from Prof. Rogers, of the University of Michigan, and Mr. Chaney, the reporter of the Supreme Court of that State, which completely refute the charge against Mr. Justice Cooley that, while upon the bench, he acted as permanent arbitrator for a railway "pool." We fully believe that all other charges which have been or may be brought against him, and which in any way reflect upon his judicial record, can be even more speedily dissolved than this one.

THE COMMENCEMENT EXERCISES of all of our four Law Schools have come and gone, and our list of lawyers will probably be greatly increased. But the increase will be by no means as large as would be supposed; for not more, perhaps, than one-third, or even less. of the graduates of the Law Schools, ever practice law.

Washington is unusually abundant in the number of its Law Schools. It has four in all, viz.: The Law Departments of the Columbian, Georgetown, National and Howard Universities. The latter institution is for colored students. These schools differ principally in the method of teaching and in the text books, some using the Socratic method, others proceeding by means of lectures, &c. They have a common end in view, and the same results are accomplished by all. They all rank with the best institutions of their class in the country, and are all of more than local fame. The recitations, lectures, &c., in each of them occur in the evening after the work of the day has been done. This enables many to attend upon the exercises who may have other matters to occupy their time during the day, and thus many engage in the study of the law, who, perhaps, would not otherwise do so.

Formerly students of these Universities who had received the degree of M. L. were admitted without further examination to the Bar of this District. But as it was considered that the Bar was receiving no benefit from this rule, but rather the contrary, it was abolished, and the applicant for admission is now regularly examined by a board of examiners, composed of three members of the Bar, who are appointed by the Court in General Term. After a satisfactory examination, proof that the applicant has studied for the required length of time, and is of good moral character, &c., he is, upon the recommendation of the board, admitted to practice before the Supreme Court of the District of Columbia.

At this point the student who wishes to practice in some one of the States encounters a difficulty. Some of the States have a rule to the effect that "attorneys of courts (of equal grade with this one) of other States, who have practiced therein for five years or more, and of good moral character and standing, may, after studying one year with a practicing attorney or judge of this court, be admitted to practice here." On account of such a rule, students from these universities, or who study law in the District of Columbia, receive no credit whatever for the length of time spent in study here. Most of the courts have no rules in regard to students of law schools, so they can only come in under the rule applicable alike to all. It seems somewhat strange that a lawyer of two years' standing or more, in the Supreme Court of the United States, should be required to study for one year in order to be admitted to the district courts of some of the States! The rule may be based on protection of State industry,

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but this is protection with a compound vengeance, and which is injurious to the State to a greater extent than it is beneficial. About the only conclusion that can be arrived at after perusing carefully the rules of some States, is that in many cases they are unjust as regards attorneys of other States. and students who study in other jurisdictions, however similar the laws may be, and sometimes lead to the most absurd results. There must be something wrong with rules which will logically lead to any but proper and reasonable conclusions.

DECISIONS OF THE FIRST COMPTROLLER IN THE DEPARTMENT OF THE TREASURY OF THE UNITED STATES; with an Appendix. By WILLIAM LAWRENCE, First Comptroller. Vol. VI. 1885. Washington. Government Printing Office.

This volume is the last in the series embracing the decisions of the late First Comptroller, Judge William Lawrence. They will prove valuable in many ways. The five preceding volumes have been very favorably received, and we believe that this volume is their equal in excellence, though less bulky than the others.

Judge Lawrence is recognized as an able lawyer, and his opinions command great respect.

It is hoped that the present First Comptroller will publish his decisions in the same form in which we have those of his predecessor.

IN Barnes v. Inhabitants of Chicopee, S. J. C. Mass., 20 Cent. L. J., 207, a traveller driving with a horse and wagon was precipitated over an embankment, which was but thirty-four feet from the travelled part of the highway, and which was not separated therefrom by a railing. It was held that he could not recover damages from the town. Murphy v. Gloucester, 105 Mass.; Puffer v. Orange, 122 Mass., 388, and Daily v. Worcester, 151 Mass., 452, cited.

United States Court of Claims

LYMAN B. PERKINS
vs.
THE UNITED STATES.

1. The power of removal from office is incident to the power of appointment where no other provision exists by law.
2. The law which provides that no officer in the military or naval service shall, in time of peace, be dismissed, except in pursuance of the sentence of a court-martial, is constitutional as applicable to such officers as are appointed by the heads of Departments, even if it be otherwise as to officers appointed by the President.
3. The heads of Departments have no constitutional prerogative as to the appointment to offices independently of the legislation of Congress, and by such legislation they are bound in respect to removals as well as to appointments.

RICHARDSON, C. J., delivered the opinion of the court.

In the case of Leopold v. The United States (18 C. Cls., 546), this court held that cadet engineers who had finished their four years' course at the Naval Academy, passed their final academic examinations, and received their diplomas before the passage of the act of August 5, 1882 (22 Stat. L., 285), became graduates and were not made naval cadets; that they are entitled to the pay provided by Revised Statutes, section 1556, p. 268, for cadet engineers after final academic examination and until warranted as assistant engineers, and that the provisions in said act of 1882 for the discharge of surplus naval cadet graduates was prospective only, and not applicable to the classes of 1881 and 1882.

A motion for a new trial was made, and upon that motion the whole case was reargued and thoroughly considered. The court unanimously reaffirmed its former decision and overruled the motion.

No appeal was taken, and the judgment of the court stands.

Again, at the present term, the same question was raised, argued and reconsidered in Redgrave's case, and the same conclusions were unanimously reached by the court.

The present case, on principle, is precisely like those we have just decided, and is ruled by them except in one particular, which alone was argued at the trial, and which we are now to pass upon.

The claimant received the notice and made the reply, which are as follows:

"NAVY DEPARTMENT,
Washington, June 26, 1883.

SIR: Having successfully completed your six years' course at the United States Naval

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Academy, and having been given a certificate of graduation by the Academic Board, but not being required to fill any vacancy in the naval service happening during the year preceding your graduation, you are hereby honorably discharged from the 30th of June, 1883, with one years' sea pay, as prescribed by law for cadet midshipmen, in accordance with the provisions of the act of Congress approved August 5, 1882.

Respectfully,

WM. E. CHANDLER,
Secretary of the Navy.

Naval Cadet L. B. PERKINS.
United States Navy, Annapolis, Md."

"HARTFORD, CONN., *July* 3, 1883.

SIR: I have the honor to acknowledge the receipt of the communication addressed to me, dated Washington, June 26, 1883, advising me of my discharge from the naval service by reason of the act of August 5, 1882.

As the provisions of that act authorize the discharge of no one but naval cadets, and, as I graduated in 1881 as cadet engineer, and the Court of Claims has unanimously held that we are not affected by those provisions, I am obliged to believe that my discharge is in error of law, and hence without force or effect.

If this be true, I am legally in the naval service, and have no right to a years' pay now tendered me as naval cadet. For the time being, therefore, I respectfully decline to receive the said pay, without in any way waiving my right to claim it if the decision of the Court of Claims should be reversed, or if it shall otherwise appear that I am legally discharged.

In so doing I mean no disrespect to the Department, but, as a citizen and public servant, I feel bound to respect the law as construed by the courts of law.

LYMAN B. PERKINS,
Naval Cadet United States Navy.

Hon. W. E. CHANDLER,
Secretary of the Navy, Washington, D. C."

On the part of the defendants it is contended that although the Secretary of the Navy, in the notice of honorable discharge, assigned as a reason for it that he acted under authority of the act of August 5, 1882, which this court has decided did not confer such authority, still, if the Secretary otherwise had the right to discharge the claimant, the order of discharge is not vitiated by a wrong recital of power, but is valid and effectual. There is some authority for this position (Kaufman's Case, 11 C. Cls., 668, 669; Wright's Case, 15 C. Cls., 90), but without passing upon it definitely we will proceed to consider whether, under any other authority the Secretary had the right thus to discharge the claimant.

In support of such authority it is urged that as cadet engineers are appointed by the Secretary of the Navy under the provisions of Revised Statutes, section 1523, they may be removed by him arbitrarily under an implied power incident to the right to appoint. Ex parte Hennen, 13 Pet., 256; Keys v. The United States, 109 U. S., 336; Blake v. The United States, 103. U. S., 227; Ware v. United States, 4 Wall., 632; Avery v. Tyringham, 3 Mass., 177; 4 Opins. Atty. Gen., 603; 5 Opins., 288; 9 Opins., 313; 10 Opins., 204.

In 1807 it was held by the supreme judicial court of Massachusetts, Chief Justice Parsens delivering the opinion, that: "It is a general rule that an office is holden at the will of either party unless a different tenure be expressed in the appointment, or is implied by the nature of the office, or results from ancient usage."

In ex parte Hennen (13 Pet., 259) the leading case on the subject in the Supreme Court of the United States, decided in 1839, the court says: "In the absence of all constitutional provision or statutory regulation, it would seem to be a sound and necessary rule to consider the power of removal as incident to the power of appointment."

In curtailment of this implied power of removal as incident to the power of appointment, section 1229 of the Revised Statutes provides that "no officer in the military or naval service shall in time of peace be dismissed from service except upon and in pursuance of the sentence of a court-martial to that effect or in commutation thereof." The claimant was never tried by a court-martial.

To overcome this provision it is urged on the part of the defendants that the claimant, a cadet engineer after graduation, was not an *officer* in the naval service.

In this view we cannot concur. That a cadet engineer like the claimant, was a graduate and in the naval service, we have already decided; that he was an officer is made manifest by the terms of the Constitution, which provides that "Congress may by law vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of departments." Congress has by express enactment vested the appointment of cadet engineers in the Secretary of the Navy, and when thus appointed they become officers and not employees. United States v. Germaine, 109 U. S., 508; Moore v. United States, 95 U. S.,

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760; United States v. Hartwell, 6 Wall., 385.

It is further urged that this restriction of the power of removal is an infringement upon the constitutional prerogative of the Executive, and so of no force, but absolutely void. Whether or not Congress can restrict the power of removal incident to the power of appointment, of those officers who are appointed by the President by and with the advice and consent of the Senate under the authority of the Constitution, article 2, section 2, does not arise in this case and need not be considered.

We have no doubt that when Congress, by law, vests the appointment of inferior officers in the heads of Departments, it may limit and restrict the power of removal as it deems best for the public interest. The constitutional authority in Congress to thus vest the appointment implies authority to limit, restrict and regulate the removal by such laws as Congress may enact in relation to the officers so appointed.

The head of a department has no constitutional prerogative of appointment to offices independently of the legislation of Congress, and by such legislation he must be governed not only in making appointments but in all that is incident thereto. It follows that as the claimant was not found deficient at any examination, and was not dismissed for misconduct under the provisions of the Revised Statutes, section 1525, nor upon and in pursuance of the sentence of a court-martial to that effect or in commutation thereof, according to Revised Statutes section 1229, he is still in office and is entitled to the pay attached to the same.

Judgment will be entered in favor of the claimant for $100.

"I SHOULD hate to be a lawyer," remarked the grocer, "and be obliged to argue contrary to my belief." Then he proceeded to inform a customer that the bottle of cotton-seed oil he held in his hand was the pure and unadulterated juice of the olive. "I should hate to be a grocer," said the lawyer, "and have to soil my hands with molasses, kerosene, and all sorts of vile stuff." He was seen a few moments later shaking hands with a murderer, a burglar and a drunkard.

THE following actually occurred in court a few days ago: Judge: "Well, Mr. ——, if you do not know how to conduct yourself as a gentlemen I can't teach you." Counsel: "That is so, my lord."—*London Law Times.*

Treasury Department

TREASURY DEPARTMENT,
FIRST COMPTROLLER'S OFFICE,
WASHINGTON, D. C., *June* 4, 1885.

In the Matter of the Right of the State of Mississippi to payment of the amount found due her on account of two and three per cent. commissions on Public Lands sold within her limits.

Under the 5th section of the act of Congress of March 1, 1817, (13 Stat., p. 349) three per cent., and under the 16th section of an act approved September 4, 1841 (5 Stat., 457), two per cent. on the net proceeds of the public lands sold within the State of Mississippi were given to said State for the purposes therein named.

The Commissioner of the General Land Office certifies to this office that there is due to said State from the sales made of said lands from July 1, 1883, to June 30, 1884, arising from the three per cent. commission the sum of $3,185.10, and, on sales made within the same period on which two per cent. is allowed the sum of $2,123.40, making in all $5,308.50.

Under an act of Congress approved August 5, 1861, entitled "An act to provide increased revenue from imports, to pay interest on the public debt, and for other purposes;" it was provided that a direct tax of $20,000,000 should be annually laid upon the United States, to be apportioned to the States respectively in the manner therein indicated. To the State of Mississippi there was apportioned the sum of $413,084.67. Of this sum there has been collected by the commissioners from the owners of lands subject to that direct tax the sum of $60,263.13, and there has been applied to the payment of said tax, from time to time, the sum of $36,145.41, arising from the two and three per cent. commissions on lands under the first mentiond act, leaving unpaid on said direct tax the sum of $316,676.13 due the United States.

Section 1766 of the Revised Statutes of the United States provides "that no money shall be paid to any person for his compensation who is in arrears to the United States, until he has accounted for and paid to the Treasury all sums for which he may be liable," etc. Under that section the accounting officers of the Treasury have been applying the proceeds arising from the sales of these lands as a credit to the State of Mississippi on her indebtedness as stated above to the United States. $36,145.41 has been so applied; but the State of Mississippi, by her attorneys, now

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comes and says that application was wrong, and that the State of Mississippi, as a State, in her corporate capacity, does not owe the United States anything, and asks that the above sum of $5,308.50 be paid to the State, and not applied as a credit as has heretofore been done.

I find, on examination of the records of this office, what purports to be a statement of an account between the United States and the State of Mississippi. It is as follows:

"No. 55630.

TREASURY DEPARTMENT,
FIFTH AUDITOR'S OFFICE,
May 15, 1868.

I hereby certify that I have examined and adjusted an account between the United States and the State of Mississippi, and find that the sum of four hundred thirteen thousand eighty-four 2-3 dollars, is due from said State to the United States, as follows, viz.:

For amount of direct tax imposed and apportioned by the provisions of the eighth section of an act to provide increased revenues from imports, to pay interest on the public debt, and for other purposes, approved August 5, 1861. Amount to be debited the State of Mississippi on the books of the Register of the Treasury, as appears from statement and vouchers herewith transmitted for the decision of the Comptroller of the Trearury thereon.

C. M. WALKER,
Auditor.

$413,084.67.

To the First Comptroller of the Treasury."

"$413,084.67.

TREASURY DEPARTMENT,
COMPTROLLER'S OFFICE.
May 29, 1868.

I admit and certify that four hundred thirteen thousand and eighty-four and 67-100 dollars are due and payable as stated in the above report.

R. W. TAYLER,
Comptroller.

To the Register of the Treasury."

1. Is the State of Mississippi, as a political corporation, indebted to the United States for direct taxes or otherwise?

2. If the above proposition should be decided in the negative, then how far and to what extent am I bound by the statement of the auditor and the certificate of Comptroller Tayler, as to the state of the account between the State of Mississippi and the United States.

The first proposition was ably, and, to my mind, conclusively discussed by my predecessor, Comptroller Porter, in 1879, in the Georgia case. Secretary McCulloch, before that time, had also, in a letter to Governor Throckmorton, of Texas, substantially advanced about the same views.

The act of Congress of August 5, 1861, apportions to the State of Mississippi the above sum. What is meant by the word State? How is it used? Sometimes it is used in its corporate capacity, sometimes in a geographical sense, and sometimes in the sense of the people of a State. Under the Constitution of the United States Congress cannot direct a levy of a direct tax on a State as a political corporation, but only on the property of the individuals of the State.

Mr. Webster, in discussing this question, says: "The Constitution creates direct relations between the government and individuals. . . . It has power to tax individuals in any mode and to any extent, and it possesses the further power of demanding of individuals military service. . . . Nothing, certainly, can more distinguish a government from a confederation of States than a possession of these powers. No closer relations can exist between individuals and any government. . . . The great object was to supersede the confederation by a regular government, because, under the confederation, Congress had power only to make requisitions on States, and, if States declined compliance as they did, there was no remedy but war against such delinquent States. . . . The Constitution was adopted to avoid this necessity. It was adopted that there might be a government which should act directly on individuals without borrowing aid from the State government."

The direct tax levied by the United States is owing to said States as directly by the people whose lands are taxed, as the direct taxes imposed by the respective States to support their local governments are owing to said States by their own people. The act directing the collection of this direct tax prescribes on what it is a lien and how it is to be collected. It is a lien on the lands of the people of the State. Hence, I also conclude that the word State, as used in said act of August 5, 1861, was used to denote a territorial not a political corporation, and that the State of Mississippi, as a political corporation, is not indebted to the United States in any amount for direct tax or otherwise. This proposition having been disposed of, then how far and to what extent am I to be controlled by the statement and certificate of the former auditor and comptroller above cited, to wit: that the State of Mississippi was indebted to the United States in the sum of $413,084.67, as therein stated.

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Section 191 of the Revised Statutes says: "The balances which may, from time to time, be stated by the auditor and certified to the heads of Departments by the commissioner of customs, or the comptrollers of the Treasury, upon the settlement of public accounts, shall not be subject to be changed or modified by the Heads of Departments, but shall be conclusive upon the Executive branch of the Government, and be subject to revision only by Congress or the proper courts," &c.

This means that whenever the accounting officers certify balances to the heads of Departments, the same shall be subject to revision only by Congress and the proper courts. The question has frequently been before the courts, and opinions of Attorneys-General have been given in regard thereto. The question was presented to Attorney-General Wirt in 1823, in which he gave his opinion on this subject. He says: "My opinion is, that the settlement made of the accounts of individuals by the accounting officers appointed by law is final and conclusive, so far as the Executive Department of the Government is concerned. If an individual conceives himself injured by such settlement, his recourse must be to one of the other two branches of government—the legislative or judicial," See 1 Op. Att. Gen., 629.

In the case of The United States v. Jones, 8 Pet., 384, the court says: "The law has prescribed the mode by which Treasury accounts shall be made evidence, and whilst an individual may claim the benefit of this rule, the Government can set up no exemption from its operation. In the performance of their official duty, the Treasury officers act under the authority of law; their acts are public, and affect the rights of individuals as well as those of the Government. In the adjustment of an account, they sometimes act judicially, and their acts are all recorded on the books and files of the Treasury Department. So far as they act strictly within the rules prescribed for the exercise of their powers, their decisions are, in effect, final; for if an appeal be made, they will receive judicial sanction," &c.

I could cite other authorities as to the power and duties of these accounting officers.

The question is presented, also, as to whether or not I can revise the decision of one of my predecessors, although he may be mistaken as to the law and facts upon which his decision may be predicated. There is abundant authority, too, upon this question. In 2 Brock., 472, in an opinion delivered by Justice Barbour, in the case of Ex Parte Randolph, the court said, in relation to the power of accounting officers: "It is wholly irrelative to the merits of this case to inquire whether there may not have been error committed by the auditor in the stating of the account, on which this proceeding is founded; because, we are not sitting here, to reverse this case, as an appellate court, on a writ of error, nor is it before us as the proceedings of special jurisdictions in England are before the King's Bench, by certiorari. In either of those aspects, the decision which we should be called upon to make, would depend upon the result of the inquiry, whether there was or was not error in the proceedings; but, sitting as we are, upon a habeas corpus, the question is not whether there is error in the proceedings, but whether there was jurisdiction of the case in the auditor of the Treasury. . . ."

The court further says: "This question was elaborately argued at the bar, and I have considered it with great care. I forbear, however, to enter into the discussion of it here, because, although it should be clearly made out that the auditor once had jurisdiction, yet, upon the facts in this case, another question arises, which, in my opinion, is decisive of the case; and that is, after the auditor shall once have settled an account of a public officer and closed it, as in this case, is it competent for him, at an after time, upon an allegation of error, of omission, or for other causes, to open it, restate it, and, upon the account thus restated, to institute proceedings by a warrant of distress against the debtor? I think it is not."

In the same opinion, after stating some other reasons to show why it should be the case, the court says: "Let us trace the injurious consequences of a contrary doctrine. Until the power of the auditor is once executed the officer knows that it is his duty to account, and, having accounted, to pay. But if, after the account had once been stated and closed, he could open it again, how often and within what period of time shall he do it? There is obviously no limitation, either as to length of time or to frequency. Suppose, after once stating it, and then opening it and restating it upon alleged error, he should think he had discovered error, he must open and restate it again. . . . But again, if it be competent to him to open the account in favor of the United States, the converse of the proposition must be equally true upon the principles of justice; it must be competent to him also, after the lapse of years, to open it against the United States and in favor of the party. Might not this course most injuriously affect the public interest? It seems to me that a doctrine which leads to such conse-

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quences cannot be sound."

Attorney General Taney, in 2 Opinions, 464, speaking of the accounting officers, uses this language:

"Where a claim has been presented, and, upon the whole evidence rejected by the accounting officers, and, upon an appeal to the Secretary of War, their decision has been confirmed, I doubt whether it is regular for his successor in that office to review his decision. The party may carry his appeal from the Secretary of War before the President and if the President affirms the decision, his remedy, if he supposes injustice is done to him, must be found in an application to Congress. For if a final decision, on a knowledge of all the facts, made by an officer authorized to decide on claims against the Government, is liable to be opened and reviewed by his successor in office, every change in the officer will produce a new hearing of the claim, and the accounts of the Government will always remain open and unsettled," &c.

The Supreme Court, in the case of the United States v. The Bank of the Metropolis, page 400, on this subject of the power of successors to reopen accounts, uses the following language:

"The successor of Mr. Barry had the same power and no more than his predecessor, and the power of the former did not extend to the recall of credits or allowances made by Mr. Barry, if he acted within the scope of official authority given by law to the head of the Department. This right in an incumbent of reviewing a predecessor's decisions extends to mistakes in matters of fact arising from errors in calculation and to cases of rejected claims in which material testimony is afterwards discovered and produced. But if a credit has been given or an allowance made, as these were by the head of a Department, and it is alleged to be an illegal allowance, the judicial tribunals of the country must be resorted to to construe the law under which the allowance was made, and to settle the rights between the United States and the party to whom the credit was given. It is no longer a case between the correctness of one officer's judgment and that of his successor."

I could quote other authorities bearing upon this question, but deem the same unnecessary.

It will be seen by the above authorities that, if my predecessor, Mr. Tayler, had jurisdiction of the subject matter of direct taxes in the State of Mississippi, and made no mistake in matters of fact arising from errors in calculation, or in which material testimony was afterwards discovered and produced, it would seem that I have no right or authority to interfere with any decision or conclusion that he may have come to in regard thereto; and the only remedy is to have the act construed by the courts or to make appeal to Congress in regard thereto.

It is said by the able attorneys representing the State of Mississippi that the war taxes have been suspended and that Congress is not enforcing their collection. This may be very true, but they still stand uncollected and may be enforced by Congress at any time it sees proper. It is further insisted that, by applying the above sums as a set-off on said direct taxes, Mississippi is being compelled to pay these taxes while other States are not compelled to pay their taxes. This office has nothing to do with matters of that kind. That is a matter, as before stated, for the courts and Congress to deal with.

If it is true that my predecessor has stated an account against the State of Mississippi, and that State is found indebted to the United States in a greater sum than the amount now found due on the sales of these public lands, then the latter amount must go as a credit upon that indebtedness to the Government of the United States.

I need not state how I would have stated the account in regard to the direct taxes; and there may be some question as to whether Comptroller Tayler properly stated it. As there are doubts about that, I have made up my mind that I will not make a final decision in this case as to whether I will treat the statement of Comptroller Tayler as a wrong statement or be governed by it as it now stands, but will, in my annual report to the Secretary of the Treasury, suggest to him the propriety of his asking Congress to take some action in regard to balances due the United States for direct taxes, hoping that thereby this whole matter can be rightfully adjusted and settled.

M. J. DURHAM,
Comptroller.

Action for Personal Injury: Assignment of Cause of Action; Law of State where Assignment Executed; Assignability of Cause of Action for Tort.—A party to whom a claim for damages for personal injuries caused by the negligence of a railroad company in Iowa has been assigned, may maintain an action thereon in the courts of this State, although such assignment was executed and delivered in another State, by the law of which it would be void. Vimont v. Chicago & N. W. R. R. Co., 21 N. W. Rep., 9, followed as to validity of assignment. [Vimont v. R. R. Co. S. C. Ia. 20 C. L. J., 371.]

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Estate upon Condition in Law.

HAUPT *vs.* WOLVERTON.

Common Pleas of Northumberland County.

A deed to A, and her heirs and assigns, with *habendum*, "so long as she bears the name of B," (her husband) is an estate upon condition, and if A marries again, and thereby changes her name, the estate is forfeited to the grantor or his heirs.

ROCKAFELLER, P. J. On the 15th of June, 1854, John Farrow, by deed of assignment, conveyed to his wife, Annetta Farrow, a lot of ground. In the premises it is granted to her, her heirs and assigns, but in the *habendum* the estate so granted is reduced upon condition by the following words: "So long as she bears the name of Farrow." After the execution of the deed John Farrow died, leaving to survive him said Annetta Farrow, his wife and three children. Whilst this estate was so vested in the said Annetta, the widow, she marrrid a man by the name of Rohrbach, and, as set forth in the stated case, "by that act changed her name, and did no longer bear the name of Farrow." After the marriage, Rohrbach and wife conveyed to David J. Willet, the defendant's testator, who, some time afterwards, rebuilt the house on the premises. This is an ejectment by Farrow's three children, to recover the land for condition broken. Recovery is resisted for several reasons, principally because it is alleged the words used in the deed do not constitute a condition; that if there is a condition it is uncertain; that the *habendum* is repugnant to the premises and void; that the condition is void, and that the parties waived the condition by allowing Willet to rebuild the house.

That where an estate is granted to a man's wife upon condition that she do not again marry, the condition is good, and is broken by her not continuing sole, is a well-settled principle of the common law. Estates upon Condition, Blackstone, Book II, *155. "As if an estate be granted to a woman during her widowhood, or to a man until he be promoted to a benefice, in these and similar cases, whenever the contingency happens, when the widow marries or when the grantee obtains a benefice, the respective estates are absolutely determined and gone." Ibid, p. *11. That such conditions are not against the policy of the laws of Pennsylvania is well settled. The authorities are numerous. The case of Commonwealth v. Stauffer, 10 Barr, 350, need only be cited. There are a number before and since. It is held that "even at common law, and in the construction of a deed, no precise technical words necessarily make a stipulation precedent or subsequent. Neither does it depend upon the circumstance whether the clause has a prior or a posterior place in the deed, so that it takes effect as a proviso; for the same words have been construed to operate either as a precedent or as a subsequent condition, according to the nature of the transaction. The dependence or independence of covenants or conditions. Lord Mansfield said, "is to be collected from the evident sense and meaning of the parties." See cases cited in note to 2 Blackstone (Chitty's edition), page 124. Among the universally observed rules in the construction of deeds, one is "that the construction be favorable, and as near to the minds and apparent intents of the parties as possible it may be, and law will permit." Another is "that too much regard be not had to the native and proper definition, signification, and acceptance of words and sentences, to pervert the simple intentions of the parties." Again, "that the construction be made upon the entire deed, and that one part of it doth help to expound another, and that every word (if it may be) may take effect and none be rejected; and that all the parts do agree together, and there be no discordance therein," and again, "that the construction be such as the whole deed and every part of it may take effect, and as much effect as may be to that purpose for which it was made." Sheppard's Touchstone, 83, 84. It is true that many things are laid down in the books which make a condition in a deed void; for instance, "a grant of land or rent, in fee simple, upon condition that the grantee shall not alien, or that his widow shall not have dower, these conditions are void as clearly repugnant to the grant." Sheppard's Touchstone, 129–132. But if the condition be that the grantee shall not alien to particular persons or within a reasonable limited period, these conditions shall stand, not being inconsistent with the nature of the estate granted. Co. Lit., 223. I do not find any case, or principle of law, laid down in the books, that enables me to determine that a man may not grant land to his wife in fee upon condition that after his death she does not remarry, or so long as she bears his name.

It is contended, as stated, that the clause in the deed in this case is not a condition, and if so, it is uncertain. The words "provided, condition," etc., are not necessary to make a condition of this kind. "A condition subsequent would be a grant to A and her heirs, ... or to B, so long as she should remain a widow. The estates in these cased vest subject to be divested, ... upon marriage of the grantee." Washburn on Real Estate, 3 ed., vol. 2, top page 4. In

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the case of McIlvaine v. Gethen, 3 Wharton, 575, Judge Kennedy considered the words, "if she shall so long remain my widow," the most appropriate of all others for making a condition, and then adds "the very words are used here which Sir Thomas Plumer seems to mention as importing a condition beyond the possibility of a doubt." Nor do I see that the condition is uncertain. The words are, "so long as she bears the name Farrow." The grantor had the right to put this condition in the deed. "A man having a thing may condition with it as he will." Shep. Touch., 118. This man had a family, and probably did not want the lot to go out of it, and therefore provided, in substance, that if his wife remarried, it was to revert to his heirs.

The clause in question could mean nothing else than that the estate was to vest only so long as the grantor's wife continued to bear his name. She would bear his name so long as she did not marry another man of a different name. When she married again, she would, it is to be presumed, change her name. Every lawyer would understand; we think, what the meaning and the intent of the grantor was. If so, to give it a different construction, would be to violate one of the rules laid down in all the text books and decisions, before referred to, viz.: "That the construction be favorable and as near to the minds and apparent intents of the parties, as possible it may be, and law will permit." It is argued that she might marry a man of the same name, a stranger to the blood of the grantor, and in that case she continue "to bear the name of Farrow." Even this would not render the condition uncertain; but I apprehend the court, in that case, would give the instrument such construction only as would give it such effect as would be in accordance with the manifest meaning and intent of the grantor, to wit: that the estate was to vest so long as the grantee remained his widow. That is what he meant, beyond all question, and it would be a strain to impute any other meaning to the words used.

It is also contended that the *habendum* is repugnant and void. I do not think so. Blackstone, vol. 2, p. 298, says, "had it (the grant) been to him and his heirs, *habendum* to him for life, the *habendum* would be utterly void, for an estate of inheritance is vested in him before the *habendum* comes, and shall not afterwards be taken away or divested by it." The same is said in Sheppard's Touchstone, 108, 109, but on the latter page it is said, "but if a man grant land to another and his heirs, to have and to hold to him for a certain number of years; in this case, whether he make livery of seisin or not, it is a good *habendum*; and by this the grantee shall have an estate for so many years and no more." Other examples are there given. The *habendum* in a deed may enlarge, qualify, expound or vary the estate given by the premises. Sheppard's Touchstone, 73; Moss v. Sheldon, 3 W. & S., 160; Tyler v. Moore, 6 Wright, 374; Walters v. Bredin, 20 P. F. S., 235.

Lastly, it is contended that the forfeiture was waived by the plaintiffs not availing themselves of the breach of the condition and allowing Willets to rebuild the house.

The case stated does not state whether they were minors or married women at the time their mother married Rohrbach, and thereby forfeited her estate. There is, however, no evidence of any act or express agreement by which a waiver could be said to take place. There is nothing before us to show that they, whilst *sui juris*, stood by and saw Willets make improvements without objections on their part, and therefore I do not see that thby have lost their title, if any they ever had. It is not like the case of the Sharon Iron Co. v. The City of Erie, 5 Wright, 341, where the city expressly dispensed with and waived one of the conditions.

No question is sought to be raised as to the necessity of re-entry. The case stated provides that if the court be of opinion that the title to the land described in the writ of ejectment, which is made part of this case, was in David Willet at the time of his death, by virtue of the therein recited conveyances, then judgment to be entered in favor of the defendant; if otherwise, then judgment to be entered for the plaintiffs for the premises described in the writ of ejectment.

Being of opinion that the title of the land was not in David Willet at the time of his death by virtue of the conveyances recited and the facts set forth in the case stated, judgment is entered for the plaintiffs for the premises described in the writ of ejectment.

[The above estate would seem to be a limitation (2 Bl. Com. *155) which requires no re-entry on condition broken. See Sharswood's L. Cas. on Real Prop., 115, 190.]—*Chester County Reports.*

Master and Servant.—Where one does not hold himself out as skilled in a particular business and his employer knows that he is without experience, all the duty he owes his employer is to act with fidelity to the extent of his ability, whatever it is. [Southern Wheel and Handle Co. v. Moorman, S. C. Ken., Ken., L. R., Nov. 21, 1884.]

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The Courts.

SUPREME COURT OF THE DISTRICT OF COLUMBIA

GENERAL TERM.

June 8, 1885.

Hine v. Magarity; decision below reversed.
Henderson v. B. & O. R. R. Co.; judgment below affirmed.
Catharine v. Lewis; judgment below affirmed.
District of Columbia v. W. & G. R. R. Co. and Met. R R. Co.; On hearing.

June 9, 1885

Same; argument resumed.

June 10, 1885.

Applegartt & Son v. Thos. P. Morgan et al.; appeal dismissed.
Kennedy v. Norlor; judgment below affimed.
State of Maryland, use, etc., v. B. & O. R. R. Co.; argument resumed.
Spindle v. Reister; affirmed.
District of Columbia v Metropolitan and Washington & Georgetown Railroad Companies; argued and submitted.

June 11, 1885.

Swan v. Swan and Newcomer v. Swan; decree below reversed and auditor's report filed July 18, 1884, affirmed.

June 12, 1885.

Flannery v. Baltimore & Ohio Railroad Company; $1,500 damages accepted.
Borland v District of Columbia; argued and submitted.

IN EQUITY.—New Suits.

May 29, 1885.

9468. Lizzie P. Sawyer v. Kincaid Sawyer. For divorce. Com sol, J. Ambler Smith.

June 1, 1885.

9469. J. Davenport Wheeler v. William Sharon et al. To declare null certain conveyance. Com sol, R Fendall.
9470. Brooke Mackall, jr., v. George W Casilear et al. To remove cloud off title. Com sol, W. Willoughby.
9471. Catharine S. Forrest et al. v. Anthony Hyde. For an account. Com sols. Lewis and Totten.
9472. Alice L. Sanborn v. Daniel L. Sanborn. For divorce. Com sol, H. B. Moulton.

June 3, 1885

9473 Albert B. Chandler v. the Postal Telegraph and Cable Co. For receiver. Com sols, Hillyer & Ralston.
9474. Lillian A. Allman v. Francis J. Allman, For divorce Com sol, J. J. Darlington.
9475. William M. Wright v. Florence B. Wright. For divorce. Com sol, W. C. Stone.
9476. John Campbell v. Johannah Campbell. For divorce. Com sol, O. S. Bundy.
9477. Jeremiah Downey v. Michael Burke et al. Specific performances. Com sol, E. H. Thomas.

June 4, 1885.

9478. Mary E. Randolph v. Robert C. Fox et al. To enforce lien, $10 000. Com sol, W. P Bell.
9479. Christine Schmidt et al v Amelia Schmidt et al. For partition. Com sol. J W. Cooksey.

June 5, 1885.

9480. Mary Fischer v. Philip Fischer. For divorce. Com sol. H. B. Moulton
9481. Mary N. G O'Reggen et al. v. John R Thompson. To quiet title Com sol, B. F Leighton.
9482. N. A. Ransom et al. v. the Com'r of Patents. Com sol, W. D. Baldwin.
9483 Judith E. Tousey v. Grandison Tousey. For divorce, Com sol, W. A. Cook.

June 8, 1885.

9484. Eliza A. Bouldin v Robert Smith et al. To substitute. Com sol, W. K. Duhamel.

June 9, 1885.

9485. John H. Smith v. Richard Smith et al. Partition. Com sol, E. F. Arnold.

CIRCUIT COURT.—New Suits at Law.

May 29, 1885.

26197. Josephine Davis v. Charles F. E Richardson et al Certiorari. Defts attys, Richards and Weaver.
26198. Maria Eastwood v. John A. Hasson. Judg't of Justice Hall $67.80.
26199 George W. Cropley v. Emil S. Friedrich. Note, $500. Piffs atty, F. W. Jones.
26200. J. B. Bryan & Bro. v. William H. Jones. Judg't of Justice Taylor $44.10
26201. Same v. Spencer G. Webb. Judg't of Justice Taylor, $28 04.
26202 George J. Mueller v. Gale Sherman. Judgt of Justice Taylor, $67,94.

June 2, 1885.

26203. Flavius J. Fisher v. George B. Matthews. Due bill, $103. Piffs attys, Hanna & Johnston.
26204. Tiffany & Co. v. Richard B. Pater. Acct., $67. Piffs atty. Mills Dean.
26205. John S. Miller et al. v. Leander M. Hobby et al. Damages, $25,000, Piffs attys, Cook and Clarke.

June 3. 1885

26206 Bateman & Co. v. Thomas W. Bartley et al. Note, $200 Piffs attys, Birney & Birney.
26207 Horace S. Walbridge v. Sidney R. Hammock. Ejectment. Piffs atty, E A. Newman.

June 4, 1885.

26208. J. Beall Johnson et al. v. the District of Columbia. Damages, $10,000. Piffs atty, J. O Marbury.
26209. Anthony Pollock v. Louis W. Habercome. Acct., $125. Piff attys, Hanna & Johnston.

June 5, 1885.

26210. Weller & Repetti v. John W. Lansdale. Judg't of Justice Bundy, $86.12.
26211. The W. & G. R. R Co. v the District of Columbia, Acct., $125. Piffs atty, E. Totten Defts atty, A. G. Riddle.
26212 Herman J Schulties, adm'r, v. John O. Rowland. Note, $100 Piffs atty, C. A. Walter.
26213. The District of Columbia v. George Emmert. Certiorari. Defts atty. W. A. Cook.

June 6, 1885.

26214. Orrin E. Hine v. Charles W. Mahon. Certiorari. Defts atty, John N. Oliver.

Legal Notices.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Charles R. Clifton, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of June next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 12th day of June, 1885

KATIE CLIFTON,
O. T. THOMPSON, Solicitor. 24 Executrix.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Peter Monaghan, late of the District of Columbia. deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of June next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 11th day of June, 1885.

THOMAS GEARY,
SAMUEL C. MILLS, Solicitor. 24 Executor.

THIS IS TO GIVE NOTICE,
That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Elizabeth A. Pumphrey, late of the District of Columbia deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of June next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 10th day of June, 1885

CHARTAIN C. MEADOR,
JOSEPH J. DARLINGTON, Solicitor. 24 Executor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia. Holding a Special Term for Orphans' Court Business, June 18th, 1885.
In the matter of the Estate of George Smith, late of Hartford, Conn., deceased
Application for Letters of Administration on the Estate of the said deceased has this day been made by George O. Chipman.
All persons interested are hereby notified to appear in this court on Friday, the 10th day of July next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. A. B. HAGNER, Justice.
Test: 24 H. J. RAMSDELL, Register of Wills.

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Legal Notices.

WASHINGTON, D. C.
The annual meeting of the Stockholders of the S. Lu Mining Co., of W Va., will be held at the office of the Company, 516 A St., S. E., on Monday, June 29th, 1885, at 7, P. M.

24 A. P. STEWART, Secretary

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

KATE MARE, guardian, against FRANK T. BARRY and others. } 7022. Equity Docket 20

Henry E Davis, the trustee appointed in the above-entitled cause, to make sale of sublots numbered from five (5) to ten, (10) both inclusive, in square numbered seven hundred and twenty-seven (727) in the city of Washington, having reported to the Court an offer by Thomas A Mitchell to purchase the said lots at and for the sum of eleven thousand five hundred and twenty five (11,525) dollars, cash, it is, this 10th day of June, A. D. 1885, ordered, that the said trustee be, and he hereby is, authorized and directed to accept the said offer, unless cause to the contrary be shown on or before the 10th day of July, A. D. 1885 Provided a copy of this order be published in the Washington Law Reporter once a week for three (3) weeks before said last-mentioned day

A true copy. Test: 24 A B. HAGNER. R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 9th day of June, 1885.

WILLIAM M. WRIGHT v. FLORENCE B. WRIGHT. } No. 9475. Eq. Doc. 24

On motion of the plaintiff, by Mr. Warren C Stone, his solicitor, it is ordered that the defendant, Florence B. Wright, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
True copy. Test: 24 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 10th day of June, 1885

JOHN HENRY SMITH v. RICHARD SMITH et al. } No. 9485. In Equity.

On motion of the plaintiff, by Mr. Eugene F. Arnold, his solicitor, is it ordered that the defendants, Eliza Smith, Betsey Smith, Charles Smith and Christian Smith, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 24 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. June 13th, 1885.

In the case of Daniel Sutter, Administrator of Benjamin P. Sutter, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 17th day of July, A. D. 1885, at 10 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the said Adm'r will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

Test: 24 H. J. RAMSDELL, Register of Wills.
JAMES H SAVILLE, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

CHARLES A. BEST v PETER BEST et al. } 8375. Eq. Doc 22.

The trustee in the above entitled cause having reported to the Court that he has made sale of lot No. 4 in square No. 864, to Benjamin F. Ferguson and Patrick Bryan, at 25 cents a square foot, it is, this 12th day of June, 1885, ordered, adjudged and decreed that the said sale be, and it is, hereby ratified and confirmed unless cause to the contrary be shown on or before the 12th day of July, 1885 Provided, a copy of this order be inserted in the Washington Law Reporter once a week for three successive weeks before the 12th day of July, 1885.

A true copy. 24 Test: A. B HAGNER R. J. MEIGS, Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 20th day of May, 1885.

IDA MAY STANSBURY et al. v. FRANK INGLEHART et al. } No. 7781. Eq. Doc. 21.

On motion of the plaintiffs, by Mr. J. J. Darlington, their solicitor, it is ordered that the defendant, Annie H Goell, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B HAGNER, Justice.
A true copy. Test: 24 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 8th day of June, 1885.

PAULINE M. POWELL v. WILLIAM POWELL. } No 9332.

On motion of the plaintiff, by Mr. William A. Cook, her solicitor, it is ordered that the defendant, William Powell, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B HAGNER, Justice.
True copy. Test: 24 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 10th day of June, 1885

MIRANDA C. DUNNINGTON v. WALTER W. DUNNINGTON. } No. 9428.

On motion of the plaintiff, by William A. Cook, her solicitor, it is ordered that the defendant, Walter W. Dunnington, cause his appearance to be entered herein on or before the first rule-day, occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B HAGNER, Justice.
True Copy Test: 24 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

JOHN A. HAMILTON et al. v. RICHARD H. CLARKE et al } No. 9063. Equity.

John A. Hamilton and Frank D. Orme, trustees herein, having reported a sale of north half of lot 15, square 347, to James L Barbour, for $6,900; and the part of lot 14, square 348, described in this suit, to Frank Teuber, for $5,040, all in Washington City, District of Columbia.

It is this 6th day of June, 1885, ordered, that said sales be confirmed, unless good cause to the contrary be shown on or before the 6th day of July, 1885. Provided, a copy of this order be published in the Washington Law Reporter for three successive weeks before said day.

A. B. HAGNER.
A true copy. Test: 23 R J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Holding a Special Term for Orphans Court Business.

In re estate of Wilhelm Bandel, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by James L. Norris.

All persons interested are hereby notified to appear in this court on Friday, the 3d day of July next at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court A. B. HAGNER, Justice.
5th June, 1885. True copy. Test: H. J. RAMSDELL,
23 Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. June 5th, 1885.

In the case of David Warner and John L. Hickman, Executors of Benjamin M. McCoy, deceased, the Executors aforesaid have, with the approval of the Court appointed Friday, the 26th day of June, A. D 1885, at 11 o'clock, a. m, for making payment and distribution under the court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 23 H. J. RAMSEELL, Register of Wills.
JAMES H. SMITH, Solicitor,

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Legal Notices.

THIS IS TO GIVE NOTICE,

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Serafino Velati, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of June, 1885.

JOSEPH J. DARLINGTON,
R. ROSS PERRY, Solicitor. 23 Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 29th, 1885.

In the matter of the Estate of Hunter Brooks, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Louisa H. Bailey and Lorenzo A. Bailey, of Greensboro, N. C.

All persons interested are hereby notified to appear in this court on Friday, the 26th day of June, next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B HAGNER, Justice.
Test: 22 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 29, 1885.

In the matter of the Will of Michael Caton, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration cum testamento annexo on the estate of the said deceased has this day been made by Mary Caton, a daughter of said decedent.

All persons interested are hereby notified to appear in this court on Friday, the 26th day of June next, at 12 o'clock, m., to show cause why the said Will should not be proved and admitted to Probate and Letters with will annexed on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 22 H. J. RAMSDELL, Register of Wills.
CHAS. A. ELLIOT, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

THE NATIONAL UNION INSURANCE CO. v. JOHN B. TYLER ET AL. } No. 8664. Eq. Doc 28

The trustee in this case, John C. Heald, having reported to the court that he has sold sub lots six (6), seven (7), eight (8), nine (9), ten (10) and eleven (11) and part of original lot one (1) in square numbered six hundred and thirty (630), to Andrew Wylie, for six thousand eight hundred and sixteen 38-100 dollars ($6,816 38). It is, this 22d day of May, 1885, ordered, that said sale shall be finally ratified unless cause to the contrary be shown on or before the 22d day of June, 1885, Provided, a copy of this order be published, in the meantime, once a week for three successive weeks in the Washington Law Reporter and the Evening Star.

A B HAGNER.
A true copy. 21 Test: R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE

That the subscribers, of Washington, D. C. and Lancaster, Pa., respectively, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Rebecca Reynolds, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 16th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 16th day of May, 1885.

REBECCA REYNOLDS KRUG,
JOHN F. REED.
F. P. B. SANDS, Solicitor. 21

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 29th, 1885.

In the matter of the Estate of Mary Buckley late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased, has this day been made by Phœbe E. Livermore.

All persons interested are hereby notified to appear in this court on the 26th day of June next at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test 22 H. J. RAMSDELL, Register of Wills.
FRANKLIN H. MACKEY, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 29th, 1885.

In the matter of the Estate of Antoinetta E Beecher, late of the District of Columbia, deceased

Application for Letters of Administration on the Estate of the said deceased has this day been made by Hosea B. Moulton.

All persons interested are hereby notified to appear in this court on Friday the 26th day of June next at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 22 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 29th, 1885.

In the matter of the Estate of Alexander Campbell, late of the City of Boston; Mass., deceased.

Application for Letters of Administration d. b. n. on the Estate of the said deceased, has this day been made by Frederick L. Moore.

All persons interested are hereby notified to appear in this court on Friday, the 26th day of June, 1885, at 10 o'clock a. m., to show cause why Letters of Administration d. b. n. on the estate of said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice
Test: 22 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 27th day of May, 1885.

WM. TAYLOR SNYDER, Trustee, v. ADELAIDE E. BAKER et al. } No. 9464. Eq. Doc. 24.

On motion of the plaintiff, by Mr. Charles D. Fowler, his solicitor, is it ordered that the defendants, Adelaide E. Baker, Sarah G. Penasco de Gale, Norberk Penasco de Gale, R. Carter Wellford, B. Randolph Wellford, Armistead N. Wellford, Virginia T. Lewis, administratrix w. a., Virginia T. Lewis, Henry G. Lewis, Trapiere S Lewis, Etta T. Key, Etta T. Smith; Joseph Hall Key, Charles E. Key, Harriet H. Key and all unknown heirs of H G. S. Key and Henrietta H., his wife, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 22 R. J. MEIGS. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business. May 29th, 1885.

In the matter of the Will of Zelina Root, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by William Cranch McIntire, one of the executors.

All persons interested are hereby notified to appear in this Court on Friday, the 26th day of June next, at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B HAGNER, Justice.
Test: 22 H. J. RAMSDELL, Register of Wills.
C. C. COLE, Solicitor.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, June 5th, 1885.

In the matter of the Estate of William Bowles, late of the District of Columbia, deceased

Application for Letters of Administration on the estate of the said deceased has this day been made by James Bellew, to be issued to Frederick W Ritter, jr.

All persons interested are hereby notified to appear in this court on Friday, the 26th day of June next at 12 o'clock, m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test; 22 H. J. RAMSDELL. Register of Wills.
H B. MOULTON, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Holding a Special Term for Orphans' Court Business. May 28th, 1885.

In the case of Andrew J. Taylor, Executor of Ann or Annie E. Rotchford, dec'd, the Executor aforesaid has, with the approval of the Court, appointed Friday the 19th day of June, A. D 1885, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test 22 H. J RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 29th, 1885

In the case of Reginald Fendall, Administrator of Gilbert M. Wight, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 26th day of June, A. D. 1885, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter and in The Evening Star previous to the said day.

Test: 22 H J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business. May 29th, 1885

In the case of Edward Derrick, Administrator of William S. Derrick, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 26th day of June, A. D. 1885, at 11 o'clock a. m, for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test 22 H J. RAMSDELL. Register of Wills.
GORDON & GORDON, Solicitors.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 29th, 1885.

In the case of John Mitchell, Administrator of David Welsh, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 26th day of June, A. D. 1885, at 11 o'clock a. m, for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

Test: 22 H. J. RAMSDELL, Register of Wills.
JOHN A. HAYWARD, Solicitor.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Sarah Swift, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 19th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of May, 1885.

GEORGE W. BONNELL,
WM T. BALEY, Solicitor. 21 Executor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Elizabeth Margaret Jones, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of May, 1885.

20 GEO. T. JONES, Executor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business. May 28th, 1885

In the case of Benj. F. Leighton, Administrator of Daniel S. Jones, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 26th day of June A. D. 1885, at 11 o'clock, a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 22 H. J. RAMSDELL, Register of Wills.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration on the personal estate of Mary Jane Martin, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of May, 1885.

ELIZA E. THORN,
A. B. DUVALL, Solicitor. 21 Admistratrix.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Mary O. Young, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 22d day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of May, 1885

IGNATIUS F. YOUNG,
WM W. BOARMAN, Solicitor. 22 Executor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, this twenty first day of May, 1885.

ROBERT J. CAMPBELL v. SARAH CAMPBELL. } In Equity. No. 9458.

Application for divorce on the ground of desertion.

On motion of the plaintiff, by Thomas J. Mackey, his solicitor, it is ordered that the defendant, Sarah Campbell, cause her appearance to be entered herein on or before the first rule-day, occurring forty days after this day; otherwise the cause will be proceeded with as in case of default,

By the Court. A. B HAGNER, Justice.
True Copy Test: 22 R. J. MEIGS, Clerk.

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Legal Notices.

TRUSTEES SALE OF VALUABLE SUBURBAN PROPERTY. IMPROVED BY DWELLING HOUSE, STUDIO, FOUNDRY, &c., BELONGING TO THE ESTATE OF THE LATE CLARK MILLS. THIS PROPERTY HAS RECENTLY BEEN SUBDIVIDED INTO TWELVE PARCELS, CONTAINING THREE TO NINE ACRES RESPECTIVELY, AND FRONTING RESPECTIVELY, ON BLADENSBURG OR COLUMBIA TURNPIKE, B & O R. R., BRENTWOOD AND QUEEN'S CHAPEL ROADS.

By virtue of a decree of the Supreme Court of the District of Columbia, passed in Equity Cause No. 9042, docket 24, the undersigned, as trustees in said cause, will offer for sale on the premises, on THURSDAY, THE EIGHTEENTH DAY OF JUNE, A. D 1885, commencing at ONE O'CLOCK P. M., all that parcel of land and premises known as Meadow Bank Spa Springs property, and formerly occupied by the late Clark Mills, containing 68,42-100 acres which has been subdivided by us into twelve lots.

Lot 1, containing 8.75-100 acres, fronting on Columbia turnpike and B. & O. R. R., improved by comfortable Frame Dwelling and outhouses. This lot has the celebrated "Spa Spring" on it.

Lot 2, containing 6.34-100 acres fronting on Columbia turnpike, improved by large barn

Lot 3, containing 3 04-100 acres, fronting on B. & O. R. R., improved by brick studio.

Lot 4, containing 3 31-100 acres, fronting on B. & O. R. R., and on a new road made by the Trustees.

Lot 5, containing 5.92-100 acres, fronting on B & O. R. R., and on New Road, impoved by large Foundry (brick, stone and frame.)

Lot 6, containing 3.57-100 acres, fronting on the New Road.

Lot 7, containing 4 49-100 acres, fronting on the New Road.

Lot 8, containing 5 66-100 acres, fronting on the New Road.

Lot 9, containing 6.35-100 acres, fronting on the New Road.

Lot 10, containing 7.21-100 acres, fronting on Brentwood Road and on the New Road.

Lot 11, containing 6 45-100 acres, fronting on Brentwood Road and on the New Road.

Lot 12, containing 7 33-100 acres, fronting on Queen's Chapel Road.

This property is one of the best situated in the District, being within fifteen minutes drive of the city, access to which is had by two roads and by the B. & O. Railroad, and adjacent to the National Fair Association Grounds, and will make splendid Villa Sites. It can readily be subdivided into smaller Building Lots.

Terms of sale, as prescribed by the decree: One third (⅓) of the purchase money cash in hand; and the residue on a credit of (1) one and (2) two years, in equal installments, and the purchaser will be required to give his notes, bearing six per cent. interest, with a deed of trust upon the property to secure the deferred installments, unless the purchaser in any case prefers to pay cash, in which case the trustees are authorized to receive the same instead of taking the notes and deed of trust. Conveyances to be made upon the confirmation of the sales by the court.

To insure good faith on the part of the purchasers, One Hundred Dollars of the cash payment upon each Lot as sold will be required to be deposited at the time of sale. Plats of the Property as subdivided can be obtained of either of the Trustess, or at the office of the auctioneers.

Parties desiring to attend sale will take train leaving Baltimore and Ohio Railroad depot (New Jersey avenue) at 12.10 p. m. for "Mills'" station

C. C. COLE,
468 Louisiana ave.,
T. A. LAMBERT,
410 5th st. n. w.,
S. T. THOMAS,
452 D st. n. w,
23-2 Trustees.
DUNCANSON BROS, Auctioneers.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a on the personal estate of Delilah Clark, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of May, 1885.

2 3 RICHARD H. GOLDSBOROUGH,
HENRY WISE GARNETT, Solicitor. Administrator c.t.a.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia

THE UNITED STATES OF AMERICA
v.
SAMUEL S. SMOOT et al } Equity. No. 4944.

Randolph Coyle, trustee herein, having reported that he has sold to Horace F. Page at and for the price of fifteen thousand four hundred and fifty dollars ($15,450 00) Lot 12 in Kidwell's subdivision of Square No. 217, it is by the court this 19th day of May, A. D. 1885, ordered that the said sale be ratified and confirmed unless cause to the contrary be shown on or before the 18th day of June, A. D. 1885 Provided, that a copy of this order be published in the Washington Law Reporter for three successive weeks prior to said last mentioned date.

A. B HAGNER.
A true copy. Test: 21 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Thomas B. Medary, late of the District of Columbia, deceased

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 27th day of May next; they may otherwise by law be excluded from all benefit of the said estate,

Given under my hand this 27th day of May, 1885.

KITTIE W. MEDARY.
EDWARDS & BARNARD Solicitors. 22 Executrix.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Catharine Morgan, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 27th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of April, 1885.

DAN'L P. MORGAN,
F. P. B. SANDS, Solicitors. 22 Administrator.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Eliza Miles, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 28th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of May, 1885.

HENRY BAILEY,
ROBT. J. MURRAY, Solicitor 22 Executor

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

JOHN T. S CROGGON et al.
v.
SAMUEL AMERY et al. } No 9093. Equity.

James S. Edwards, trustee herein, having reported a sale of part of lot 3, square 494 (particularly described in the proceedings herein) in Washington City, in the District of Columbia, to William Henery, for $3 050.

It is this 27th day of May, 1885, ordered, that said sale be confirmed, unless good cause to the contrary be shown on or before the 27th day of June, 1885. Provided a copy of this order be published in the Washingcon Law Reporter once a week for three successive weeks before said day.

A B HAGNER,
A true copy 22 Test: R J. Meigs, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

ELIZA C. JACKSON et al.
v.
ELIZABETH L. JACKSON et al. } No 9395. Equity.

William H. McElfresh, the trustee herein, having reported a sale of lot 5, in square 571, in Washington City, in the District of Columbia, to Charles C. Meads, for $3,000.

It is this 27th day of May 1885, ordered, that said sale be confirmed, unless good cause to the contrary be shown on or before the 27th day of June 1885. Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said day.

A. B. HAGNER.
A true Copy. Test: 22 R. J. MEIGS, Clerk.

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Legal Notices.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of John E. Kendall, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of May next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 15th day of May, 1885.
JOHN BLAKE KENDALL,
EDWARDS & BARNARD, Solicitors. 21 Executor.

THIS IS TO GIVE NOTICE:
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Sophia Bender, late of the District of Columbia, deceased
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of May next: they may otherwise by law be excluded from all benefit of the said estate
Given under my hand this 1st day of May, 1885.
SUSAN L. DUBANT,
902 Sixth street, N. W.
21 Administratrix

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Bell W. Deal, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of May next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 16th day of May, 1885.
21 G. H. SLAYBAUGH, Executor

THIS IS TO GIVE NOTICE.
That the subscriber, of Washington City, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John W. Tucker, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 20th day of April, 1885.
ALBERT F FOX,
HOSEA B. MOULTON, Solicitor. 21 Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 5th day of June, 1885.
ABRAHAM KROON
v
SARAH KROON. } Equity Docket 24 No 9295.
On motion of the plaintiff, by Mr. J. Ambler Smith, his solicitor, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.
By the Court. A B. HAGNER, Justice.
A true copy. Test: 23 R. J. MEIGS, Clerk.

IN THE SEPREME COURT OF THE DISTRICT OF Columbia, Holding a Special Term for Orphans' Court Business. June 5th, 1885
In the case of Emma Frances Quinlan, Executrix of Sarah A. Redman, deceased, the Executrix aforesaid has with the approval of the Court appointed Friday, the 26th day of June, A. D 1885, at 11 o'clock, a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executrix will take the benefit of the law against them Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
Test: 23 H. J RAMSDELL, Register of Wills.
SAMUEL C. MILLS, Solicito..

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Holding a Special Term for Orphans' Court Business. June 6th, 1885.
In the case of Charles Abert, Executor of Robert H. Wyman, deceased, the Executor aforesaid has, with the approval of the Court appointed Friday, the 26th day of June, A. D. 1885, at 11 o'clock, a. m., for making payment and distribution under the Court's direction and control; when and where creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day
Test: 23 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. June 5th, 1885.
In the case of Morris Keim, Administrator of Wm. Acton, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 26th day of June, A. D. 1885, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
Test: 22 H. J. RAMSDELL, Register of Wills.
JOHN B. LARNER, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. The fifth day of June, 1885.
In the matter of the Estate of Mary C. McDonnell, late of the District of Columbia, deceased.
Application has been this day made for the Probate of the last Will and Testament and that Letters of Administration with the will annexed on the estate of the said deceased be granted to F. Marcellus Cox, of Maryland and George E. Hamilton, of said District.
All persons interested are hereby notified to appear in this court on Monday the 6th day of July next at 12 o'clock, m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration with the will annexed on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. A. B. HAGNER, Justice.
Test: 23 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 6th day of June, 1885.
LILLIAN A. ALLMAN
v
FRANCIS J. ALLMAN. } No 9474. Eq. Doc. 24.
On motion of the plaintiff, by Mr. J. J. Darlington, her solicitor, it is ordered that the defendant, Francis J. Allman, cause his appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.
By the Court. A. B. HAGNER, Justice.
True copy. Test: 23 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business June 5, 1885.
In the matter of the Will of Gurden Snowden, late of the District of Columbia, deceased.
Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Sarah Snowden
All persons interested are hereby notified to appear in this Court on Friday, the 3d day of July next at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. A. B. HAGNER, Justice.
Test: 23 H. J RAMSDELL, Register of Wills.
JAS. H. SMITH, Solicitor.

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THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of Virginia Taylor, late of the District of Columbia, deceased.

All persons having claims again the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 22d day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of May, 1885.

23 VIRGINIA TAYLOE LEWIS,
HENRY WISE GARNETT, Solicitor Administratrix c t.a.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John McClelland, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 29th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of May, 1885.

23 JOHN McCLELLAND, JR.,
HENRY WISE GARNETT, Solicitor. Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

MARY ANN ROTH v. GEORGE W. ROTH et al. } No. 8890. Eq. Doc. 23.

Upon consideration of the report of John F. Hanna and Irving Williamson, trustees, this day filed, it is this 1st day of June, ordered that the sales of lot 5 of Davidson's subdivision of lots in square No. 341, to William F Free, for the price of $3401.30, and of part of original lot 3, in square No. 515. to Mary Ann Roth, for the price of $3000, be, and the same are, hereby ratified and confirmed, unless cause to the contrary thereof be shown on or before Monday, the 22d day of June, 1885. Provided a copy of this order be published in the Washington Law Reporter once a week in each of three successive weeks before the said date.

A. B. HAGNER, Justice.
True copy. Test: 23 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 28th day of May, 1885.

FANNIE L. TAYLOR v. WILLIAM B. TAYLOR. } No. 9467. Eq. Doc. 24

On motion of the plaintiff, by Mr. John Cruikshank, her solicitor, it is ordered that the defendant, Wm. B. Taylor, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 23 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. June 2d, 1885.

In the case of Catharine Virginia Simms and Wm. J. Warren, Exr's of Edward Simms, the Ex'rs aforesaid have, with the approval of the Court, appointed Friday, the 3d day of July, A. D. 1885 at 11 o'clock a. m, for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 23 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

SAMUEL M. CASTELL v. JOHN H CASTELL et al. } 6894. Eq Doc. 19.

On hearing the report of Joseph F. Hodgson, trustee, it is, this 5th day of of June, 1885, ordered, that the sales reported by said trustee, be confirmed unless cause to the contrary be shown on or before the 5th day of July, 1885; Provided that a copy of this order be published in the Washington Law Reporter once a week for three weeks before said day.

The report states the amount of sales to be $3,800.

By the Court. A. B. HAGNER.
A true copy. Test: 23 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 1st day of June, 1885.

J. DAVENPORT WHEELER, Complainant, v. WILLIAM SHARON et al., Defendants. } No. 9469. Eq Doc. 24.

On motion of the complainant, by Mr. Reginald Fendall, his solicitor, it is ordered that the defendants William Sharon and Sarah Althea Hill, otherwise Sarah Althea Sharon, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
True copy. Test: 23 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia. Holding a Special Term in Equity.

GARDNER G. HUBBARD, Complainant, v. GERTRUDE H. GROSSMANN et al., Defendants. } No. 9274.

The trustee in this cause, Charles James Bell, having reported to the Court that he has sold the equity in lot numbered fifty-four (54) of Thomas Sunderland's subdivision of square one hundred and fifteen (115) in the city of Washington, as recorded in the office of the surveyor of the District of Columbia in liber ten (10) folio fifty-three (53) to Gertrude H. Grossmann, for the sum of thirty-five hundred dollars ($3500.00); and that the said purchaser has complied with the terms of sale and is desirous of paying all the purchase money in cash: It is, this 2d day of June, A. D 1885, ordered, that the said sale be finally ratified and confirmed, and the trustee then allowed to accept all the purchase money in cash, unless cause to the contrary be shown on or before the 2d day of July, A. D. 1885 Provided a copy of this order be published in the meantime once a week for three successive weeks in the Washington Law Reporter.

A. B. HAGNER.
A true copy. Test: 23 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

RUDOLPH EICHHORN v. MARIA F. CONLAN et al. } No. 5181. Equity.

Wm. F. Mattingly, trustee, having reported to the Court that pursuant to the decree, he sold at public auction on May 14th, 1885, to the several purchasers named in said report, said lots, Nos. 47 to 66, both inclusive, in square No. 621, in the city, for the aggregate sum of $11,365 75, it is this 1st day of June, A. D. 1885, ordered, that the complainant is hereby excused from complying with the terms of sale as to the lots purchased by him, and that all of said sales be finally ratified and confirmed on the seventh day of July, 1885, unless cause to the contrary be shown before said day. Provided, this order be published in the Washington Law Reporter once a week for three successive weeks prior to said day.

A. B. HAGNER.
A true copy. Test: 23 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 3d day of June, 1885.

J. B. BRYAN & BRO. v. JEREMIAH HARALSON } No. 26,144. Law.

On motion of the plaintiffs, by Mr. E H. Thomas, their solicitor, it is ordered that the defendant, Jeremiah Haralson cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. W. S COX, Justice
True copy. Test: 23 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c.t.a. on the personal estate of Charles H. Manning, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 3rd day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 3d day of June, 1885.

ELIZABETH B. MANNING,
Administratrix c. t. a.
23 57 D St., N. E.

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Washington Law Reporter

WASHINGTON - - - - - - - - July 4, 1885.

GEORGE B. CORKHILL - - - EDITOR

GEORGE B. CORKHILL has removed his law offices to the Glover Building, No. 1419 F street, Northwest.

A FULL notice of the public services of Judge Thomas W. Bartley, who died in this city on the 20th ultimo, was furnished for last week's REPORTER, but was not published for want of space. Judge Bartley was Chief Justice of Ohio in 1853, having been elected at the first election under the new constitution of 1851, a judge of the new Supreme Court, together with A. G. Thurman, R. P. Ranney, W. B. Caldwell and J. A. Corwin. He was also Lieutenant-Governor and acting Governor in 1844, removed to Washington City in 1867 where he was engaged in the practice of law to the time of his death. He was a brother-in-law of General and Senator Sherman.

Judge Bartley was an able writer and was an occasional contributor for several years to the columns of the LAW REPORTER.

A NEW publishing company has been organized in Chicago called the Hatton-Snowden Company of Chicaeo, to print, publish and deal in newspapers, with a capital stock of $100,000. Its incorporators are Frank Hatton (late Postmaster-General), A. C. Snowden (late managing editor of the *National Republican* of this city) and P. L. Shuman. The principal business will be the publication of the *Evening Mail.* If the paper does not succeed it will not be for want of good newspaper enterprise and ability.

THE definition of the English barrister who defined a mutual benefit society as "a number of impecunious people coming together to make loans to each other," is not only significant but very appropriate.

THE LABOR RIOTS in Chicago are assuming a somewhat dangerous situation, the civil authorities seem perfectly helpless, and the city is at the mercy of the infuriated mob.

There does not seem to be any effort to secure submission to the authority of the government, but a weak and puerile attempt to effect a compromise. This might be well enough before any open violation of the law, but once a mob organizes and defies the legal authorities, destroys private property and endangers human life, it should be dealt with like any other criminal and taught that obedience to law was the first duty of a citizen, and that personal violence could not right private wrongs. Until some decisive action is taken, some man with the courage to load a cannon with grape shot and let powder and ball enforce the civil authority, we may expect these disgraceful riots which may be so nurtured upon their crimes that neither civil or military will be able to put them down. An example should be made, and that at once.

MANY of the sentences of the judges in the celebrated Star Chamber of England seem of so atrocious a character that it is difficult to believe they ever met the approval of honest men, and the student of legal history finds himself wondering that this disgraceful administration of pretended justice was not sooner overthrown, and astonished at the fulsome praises bestowed upon some of the judges of the historian. Take the case of Lodowick Bowyer who was accused of slandering Archbishop Laud, the sentence moved by Lord Cottington was £3,000 fine, stand in the pillory here in the palace, with a paper, stand in Cheapside likewise; at Reading likewise, with his ears nailed; if he be quit from the felony, to return to perpetual imprisonment in some house of

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correction. To this Lord Chief Justice Richardson added, to be whipped, imprisoned in Bridewell, burning in the face R or L.

The sentence which combined both these suggestions may be seen in Rushworth, Vol. III, Appendix, p. 65.

THE recent conviction of the builder Buddensiek, in New York, for erecting dangerous and unsafe houses, was a very happy surprise to those who had been long urging the enforcement of this law by the authorities. The appalling catastrophe which resulted in the loss of human lives, aroused the public feeling to such a condition of excitement that the courts were compelled to take notice and attempt the enforcement of this dead letter law. The result will have a salutory effect upon persons who have been engaged in constructing houses at the very cheapest price without any reference to the security or safety of the persons who have to occupy them.

In all the large cities, we have no doubt, many persons cannot be found who are now building houses are sacrificing everything in the way of health, comfort or safety, to greed, for cheap construction and money making. In very few cities are the building inspectors of any value whatever, and in most cases their authority and approval represent not their judgment but the price received for it from the builder, who can well afford to pay liberally for the permission and authority.

If a few of these men were sent to the penitentiary, along with their associates in crime, it would be for the general good. Dangerous construction, bad ventilation, and outrageous plumbing or drainage in the construction of buildings is the bane of the present day, and there is no way to correct it except by prompt and severe punishment as a crime. The prosecution should include all, the contractors for the separate parts, as well as the building inspector and the builder himself.

Married Women.

A somewhat curious and novel question, arising indirectly out of the Married Women's Property Act, 1882, recently came before Mr. Justice Day. A married woman, living with her husband, was sued by a dentist for professional services rendered in 1882. Her husband had originally been joined as defendant, but the action against him had been discontinued. The case was Clifford v. Hutchins and wife, and the circumstances were these:

The defendant had before the occasion in question, procured the services of the plaintiff for herself and her two daughters, and had paid for those services herself in cash. She again applied for and received the services sued upon, in 1882. The claim included a charge for artificial teeth supplied to her. Up to this time the plaintiff was not aware that he was dealing with a married woman; he stated that he supposed her to be a widow. He uniformly rendered accounts to "Mrs. Hutchins." In 1883, not having been paid, he received a letter from the defendant stating that she had handed the account to her husband, and promising that if he did not pay it she would, as she had separate property of her own. The learned judge held that the services rendered were "necessaries," for which the husband alone was liable; and that the express promise of the defendant being upon these facts, *nudum pactum*, was not binding upon her.

This decision seems to us to be open to question. It can hardly be doubted that if the defendant had not been a married woman she would have been liable. She purchased the articles and procured the plaintiff's services for herself. She alone had the benefit of the contract, and her acts were such as necessarily to lead the plaintiff to suppose that she was pledging her own personal credit. Assuming, however, that she did not contract "on the faith of her separate property," she was incapable of contracting at the time the debt was incurred; and if the contract was for "necessaries," her husband would be *prima facie* liable. But she did not warn the plaintiff that he must look to her husband alone for payment, and, whether or not he would have been liable under the doctrine of "implied authority," she would surely, but for the disability which attached to her as a married woman, have been held to have pledged her personal credit, either in addition to or in lieu of his credit.

It is conceived that, under these circumstances, her subsequent promise, made at a time when her disability was removed, was binding on her as a ratification of her previ-

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ous contract. It was well established law, before the Infants' Relief Act, 1874, that if an infant had had the benefit of a contract, even for goods other than "necessaries," his promise to pay the debt, made when he was of age, was binding on him, even though the contract was void, and not merely voidable, at the time it was made. This was laid down by Baron Parke in Williams v. Moor (11 M. & W., 256), and was in affirmance of the principle stated by Lord Chief Justice Ellenborough in Cooper v. Martin (4 East, p. 83), adopted by Lord Chief Justice Denman in Eastwood v. Kenyon (11 A. & E., 438, p. 449). Surely the same principle would now be applicable to a married woman. In 1883 she became *sui juris*, and her position was similar to that of an infant coming of age. Since, therefore, the defendant alone had had the benefit of the contract, and would have been liable but for her disability, her subsequent promise would seem to have the same effect as that of the infant in the cases referred to.

It has been supposed to have been decided that a promise by a widow to pay for "necessaries" which she had purchased while living separate from her husband was not binding on her, on the ground that it was *nudum pactum*. See Chitty on Contracts, 11th ed., p. 40. The cases cited in support of this view, Littlefield v. Shee (2 B. & Ad., 811) and Meyer v. Haworthy (8 A. & E., 467), do not bear it out. They turned entirely on pleading, and were decided solely on the ground of the insufficiency of the declaration. In Lee v. Muggeridge (5 Taunt., 36) the executors of a widow were held liable on her express promise to pay out of her estate for a loan advanced during her marriage to her son-in-law at her request, on the security of a bond which she had given, though she had no separate estate at the time over which she had a power of disposition. This decision has been disapproved (see Eastwood v. Kenyon, 11 A. & E., p. 450), but only on the ground that it went too far in holding that a "moral obligation" is sufficient to support a subsequent promise.

There is one other point in the case we would briefly refer to. It is consistent with the facts proved that the husband of the defendant had prohibited her from pledging his credit. Debenham v. Mellon (43 L. T. Rep., E. S., 673) decided that if so he would not be liable. Would it be possible to hold that the wife, for whose sole benefit the plaintiff's services were supplied, was not liable either, notwithstanding her promise and previous payments? Should it be said that if she knowingly contracted without authority she would be liable on the ground that she would have been guilty of a fraud if she had not intended to pledge the credit of her separate property, why should not the same argument apply here? If she had so acted, as she undoubtedly had, as to make the plaintiff suppose she was pledging her own credit, surely she should be precluded from saying that, though she pledged her personal credit, she did not pledge that of her separate property. The old rule, as to the necessity of expressly proving that a married woman contracted "on the faith of her separate property," has been much abridged of late, and it would be unfortunate if the rule should still be too strongly insisted on, at the cost of producing unreasonable results.—*Law Times.*

SCENES like that which occurred upon the conviction of Lee for murder at the Central Criminal Court are frequent, and arise from the practice of "calling upon' the prisoner after verdict and before sentence. When Lee proposed, in response to the usual question, to discuss the evidence over again, and was stopped by the judge, he said: "Then, why am I asked if I have anything to say? It is a mere farce." So it is, and a wrangle between judge and prisoner, in which the prisoner has the better of the judge, is not a seemly preliminary to the judge passing sentence of death. The practice of calling on the prisoner after verdict now that the legal technicalities which used formerly to be raised at that stage no longer exist, answers no purpose except to tempt the prisoner to reopen the facts of his case, or to glory in or justify his crime. If it is still desirable that the prisoner should have an opportunity of moving in arrest of judgment, the formula might at least be altered in accordance with the fact, so that he may be called on to allege any ground of law why sentence should not be passed, and not at so supreme a moment be solemnly invited to do what he is instantly forbidden doing as soon as he attempts it.—*London Law Journal.*

A PAROL contract having been made for the sale or exchange of real estate, it was repudiated by the defendant, who refused to make a conveyance. *Held*, that the measure of damages is not only the expense to which plaintiff was put on account of the contract before it was finally repudiated by defendant, but also the value of the property to which plaintiff deprived himself by conveyance to defendant upon the faith of defendant's promise. [Zimmerman v. Galbraith, S. C. Penn., May 5, 1884.]

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False Pretenses.

In People v. Jordan, recently decided by the Supreme Court of California, it was held that an indictment for false pretences will lie for falsely and fraudulently representing that certain railroad bonds are of a certain market value, whereby a sum of money is obtained on the pledge thereof. The court, Morrison, C. J., said: "It is true that the authorities may be somewhat conflicting, and that in many of them very nice and not entirely satisfactory distinctions are drawn between cases that are and cases that are held not to be within the statute; and as was said by Dewey, J., in Commonwealth v. Norton, 11 Allen, 267: 'It may be difficult to draw a precise line of discrimination applicable to every possible contingency, and we think it safer to leave it to be fixed in each case as it may occur.' But we have found no case that holds such representations as are charged in this case not indictable. The following principles and authorities may be cited in further support of the views herein expressed. A false pretence is defined to be 'representation of some fact or circumstance calculated to mislead, which is not true.' Commonwealth v. Drew, 19 Pick., 179. What is said to be a fuller and practically better definition is the following: 'A false pretence is such a fraudulent representation of an existing or past fact, by one who knows it not to be true, as is adapted to induce the person to whom it is made to part with something of value.' 2 Bish. Cr. Law, § 415. In Reg. v. Evans, 8 Cox C. C., 257, note to Bish. Cr. Law, 235, it is said: 'Had the prisoner represented the note to be of five pounds value, when she knew it was not of that value, and the jury had found the false pretence, and that the note was of less value than five pounds, to her knowledge, it would have been sufficient to sustain a verdict of guilty.' In Commonwealth v. Stone, 4 Met., 43, the Supreme Court of Massachusetts held that the passing of a bill of a broken bank at its nominal value, by one who represents it to be of such value,, yet knows it to be nearly if not quite worthless, is an indictable pretence under the statute, although the bill may be of some value. 'A representation that a horse is sound, by one who knows it not to be true, is within the statute, and is indictable.' State v. Stanley, 64 Me., 157." To the same effect is Watson v. People, 87 N. Y., 561; s. c. 41 Am. Rep., 397. "The doctrine in the language of Russell, that the pretence 'need not be such an artificial device as will impose upon a man of ordinary caution, is fully established, at least in the English courts. And the pretence need not be such as cannot be guarded against by common prudence.' 2 Bish. Cr. Law, § 436. 'It is substantially settled that any false representation, extending beyond mere opinion, concerning the quality, value, nature or other incident of an article offered for sale, whereby a purchaser relying on the representation is defrauded, is a violation of these statutes.' 2 Bish. Cr. Law. § 447. 'A mere opinion is not a false pretence, but any statement of a present or past fact is, if false.' 2 Bish. Cr. Law, § 454. 'There need be only one false pretence, and although several are set out in an indictment, yet if any one of them is proved, being such as truly amounts in the law to false pretence, the indictment is sustained.' 2 Bish. Cr. Law, § 418. A false representation that one Conlin was a liquor dealer, doing business as such in Boston, was held to be within the statute. Commonwealth v. Stevenson. 127 Mass., 449." See also Higler v. People, 44 Mich., 289; s. c. 38 Am. Rep., 167, where the representation was of being a "storekeeper."—*Kansas Law Journal.*

Attorney and Client.

A question which not unfrequently occurs in these days in which the attorney is often identified with the interests of his client not merely by the tie of professional duty but by a pecuniary interest in the result, was up in Warner v. Comstock, (22 Northw. Rep., 64), where the court held that a principal is not concluded by a judgment brought against his agent, although the principal acted as attorney for the agent at the trial.

This was a rural horse case. Plaintiff held a chattel mortgage on a horse he had sold and employed a constable to foreclose the mortgage. The constable (Gilbert) seized the horse; and the purchaser (the mortgagor) replevied it by bringing an action against Gilbert, and on the trial of that action the present plaintiff, Warner, acted as attorney for Gilbert, and pleaded it was at his request that Gilbert took the property.

Gilbert, the constable, then assumed the conduct of the defence himself, and Warner withdrew and left the court.

The court having rendered judgment against the constable in the replevin suit, the successful mortgagor sold the horse and plaintiff now brought trover against the purchaser.

The court below held that the judgment against the constable was binding on the present plaintiff, who had put in the plea for him. This the appellate court held error.

CHAMPLIN, J., says in delivering the opin-

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ion of the court: The relation between Gilbert and Warner at the time of the trial before the justice, and the circumstance attending the trial, were not such as to make Warner the real party defendant, so as to bind him by the judgment. In taking and detaining the horse, Gilbert merely acted as the agent of Warner. Agents and principals do not by virtue of such relation have any successive connection to rights of property. They are not in privity with each other, and the principal is not concluded by a judgment in a suit brought against his agent. The fact that the principal acted as attorney for the agent at the trial does not change the status of the parties, or affect the rights of the principal, or extend the scope and effect of the judgment against the agent.

It was held in Taylor v. Young (22 Northw. Rep., 799), that an attorney who bought in property at a sale conducted by him for his client, taking the title in his own name and claiming an interest to secure the payment of his fees, could not, on the ground of nonpayment thereof, convey away the property without first having his claim of a lien settled with his client, and after the business had been concluded, giving his client an opportunity to pay the same and obtain a release from him.

Infamous Crimes.

Infamy is the loss of character or public disgrace which a convict incurs, and by which he is, at common law, rendered incompetent as a witness. Burrill's Law Dict. Or it is the state of one who has been lawfully convicted of a crime, followed by a judgment by which he has lost his honor. United States v. Dickinson, 2 McLean, 325. Some of the courts have held that the following crimes will disqualify a person from testifying: Treason, felony, forgery, perjury, subornation of perjury, bribery, conspiring to convict one of crime, and procuring the absence of witnesses. Fox v. Ohio, 5 How., 410. The following crimes have been held as infamous. Grand larceny: Taylor v. State, 62 Ala., 164. Petit larceny: State v. Gardner, 1 Root (Conn.) 485; Silvester v. State, 71 Ala., 17. Forgery: Poage v. State, 3 Ohio St., 229. Conspiracy to defraud creditors: United States v. Porter, 2 Cranch C. C., 60. Burglary: Taylor v. State, *supra*. Receiving stolen goods: Com. v. Rogers, 7 Metc. (Mass.) 500.

Text writers classify crimes which render the perpetrators infamous, as treason, felony and *crimen falsi*. Under *crimen falsi* the civil law places perjury, forgery, piracy, counterfeiting, false heir, cheating in weights and measures, barratry and selling or mortgaging property to two several persons. Wood's Inst. Civil Law, 282. *Crimen falsi* is an offence which involves the charge of falsehood and injuriously affects the administration of justice by the introduction of falsehood and fraud. 1 Gr. Ev., 376, 378.

It is very essential to know what crimes are infamous in prosecution of criminals before United States tribunals. The Fifth Amendment to the United States Constitution says: "No person shall be held for a capital or otherwise infamous crime, unless on presentment or indictment of a grand jury."

Under this Amendment infamous crimes cannot be prosecuted in the United States courts on information. This Amendment follows the common law doctrine, that only misdemeanors may be prosecuted by information. Blackstone says that the mode of prosecuting by information is as old as the common law itself. But every kind of information was confined by the constitutional law to mere misdemeanors. 4 Bl., 310. This doctrine is accepted in this country, that infamous punishment cannot be inflicted on information. Cooley's Const. Law, 291.

It is not the punishment, however, but the nature of the crime that makes the witness infamous. 1 Phil. Ev., 25; Pendock v. Mackinder, Wiles, 665.

The United States courts have generally held information proper in prosecutions of crimes when the conviction of the prisoner did not, at common law, disqualify him from testifying. U. S. v. Black, 4 Sawyer, 211; U. S. v. Maxwell, 3 Dil., 275; U. S. v. Shepherd, 1 Abb. U. S., 431.

This doctrine has been lately modified by the United States Supreme Court, which now holds that a crime punishable by imprisonment for a term of years at hard labor in a penitentiary or similar institution is an infamous crime, within the meaning of the Fifth Amendment to the Constitution. Ex parte Wilson, 17 Chicago Leg. News, 288. The same doctrine is held in Massachusetts; that imprisonment in the penitentiary is now, by law, substituted for all former ignominious penalties, and if this is not infamous, then there is no infamous punishment other than capital. Jones v. Robbins, 8 Gray, 329. The States generally prescribe by statute what crimes are infamous, and these statutes are not always in accord with the late decision of the United States Supreme Court. In Illinois it is held that the statute leaves out several offences, punishable by confinement in the penitentiary, that were neither deemed

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infamous at common law nor are declared to be so by statute, notably among which may be mentioned manslaughter. Bartholomew v. People, 104 Ill., 607.

In New York if a person is sentenced upon a conviction of felony, he is not a competent witness, unless pardoned. If the conviction was for perjury a pardon does not restore competency. 3 R. S., 998, sec. 33 (5th ed.); 2 Wait's Pr., 657; 2 Wait's Law and Pr., 369. So it appears that in New York an infamous crime must be a felony. The laws of other States do not accord with the decision in the case of *Ex parte* Wilson, *supra*. In this case "hard labor" seems to be one of the essential elements of infamy. Blackstone classes infamous punishments as those which are ignominious and mixed with a degree of corporal pain, as whipping, hard labor in the house of correction or otherwise, the pillory, the stocks and the ducking stool. 4 Bl., 377.

Another authority gives infamous punishments as death, gallows, pillory, branding, whipping, confinement at hard labor and cropping. 2 Dane's Ab., 569. In the case of *Ex parte* Wilson, *supra*, "hard labor" is an element of infamy following the doctrine of the old text writers.—*Chicago Legal News*.

Contempt in Divorce Suits.

Supreme Court N. Y.—General Term.

SOPHIA JACQUIN, Respondent,

vs.

CHARLES JACQUIN, Appellant,

A husband is not liable to be punished by way of proceedings for a contempt for the non-payment of final costs in a suit against him by his wife for a separation.

Appeal from an order adjudging the defendant guilty of contempt, and directing his commitment until he shall pay to the plaintiff the sum of $681.81, with interest, and the sum of $10 costs of motion, together with sheriff's fees on the execution of the warrant of commitment.

DANIELS, J.—The amount directed to be paid by the order was the costs and counsel fee recovered by the final judgment entered in the action. This judgment directed that the defendant should pay the amount to the attorneys for the plaintiff within five days after service upon him of a certified copy of the judgment, and the only point required to be examined is whether the court was authorized to direct his commitment for the non-payment of this sum of money. The amount was fixed and definite and capable of being docketed against the defendant, and collected by means of an execution. And when judgment has been entered for the recovery of a fixed sum of money, there it has been provided by section 1240 of the Code of Civil Procedure that it may be enforced by execution. The action was for a separation, and it resulted in such a judgment in favor of the plaintiff. In an action of this description it has been provided by section 1773 of the Code of Civil Procedure that the defendant may be punished for his failure to make payment of any sum of money as that may be required by the judgment or order referred to in the preceding section. But that section does not include that part of the judgment which may be entered for the recovery of costs. It has been expressly limited to that part of the judgment requiring the husband to provide for the education and maintenance of any of the children of the marriage, or for the support of his wife, and to the non-payment of money directed to be paid by orders provided for in section 1769. That section has been limited to orders made during the pendency of the action by which the husband may be required to pay any sum or sums of money necessary to enable the wife to carry on or defend the action, or to provide for the education and maintenance of the children of the marriage, or for the support of the wife. Neither this section nor either of the others referred to include so much of a final judgment as may be entered for the recovery of the costs and expenses of the action, except that section 1769 has permitted the court to order the payment of final costs to be made out of property sequestered or otherwise in the power of the court.

It is evident from this construction that the recovery of final costs secured the attention of the legislature in the enactment of the section. But while this authority was given to the court to direct their payment out of property sequestered or otherwise in its power, no authority to punish the defendant by a proceeding for a contempt for non-payment of final costs was conferred by this or either of the other sections, and if such authority was intended to have been given it is reasonable to suppose that it would have been found in one or more of these sections of the code, enacted as declaratory of the rights of the parties, and to describe the mode of proceeding in actions of this description. The absence of such a power from these sections is a very cogent indication that it was not designed to be possessed by the court; but that the power to punish the defendant for contempt was intended to be limited to his failure to comply with orders made during the pendency of the action for the payment

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of money, or directions contained in the final judgment for the education and maintenance of his children and the support of his wife.

It seems to have been supposed that the husband was liable to be punished by way of proceeding for a contempt for the non-payment of final costs, under the authority of section 1241 of the Code. But by subdivision 2 of that section it has been provided that, where the judgment is final and part of it cannot be enforced by execution, as prescribed in the preceding section, the part or parts which cannot be so enforced may be enforced by proceedings for contempt. This limitation of the right to enforce the final judgment plainly excludes that part of it which may be enforced by execution, as the direction for the payment of final costs is always capable of being enforced, and that conforms to the directions contained in subdivision 3 of section 14, which permits a party to be punished by way of contempt for the non-payment of a sum of money ordered or adjudged to be paid only in a case where by law execution cannot be awarded for the collection of such sum. The direction given for the payment of costs in the judgment was not a mandate within the signification of subdivision 3 of section 8; for that has been so defined by subdivision 2 of section 3343 of the Code as not to include a fixed sum of money recovered by a final judgment.

The policy indicated by all these provisions of the Code is that such a sum is to be recovered by means of an execution and not to be enforced by proceedings by way of a contempt because of its non-payment. And these provisions require that subdivision 4 of section 1241, providing for the enforcement of a judgment for the payment of money into court or to an officer of the court, should be subordinated to this construction. For care would not have been taken to restrict the right of the successful party to an execution if it had been designed to subject him to proceedings by way of contempt under the more obscure language of this subdivision. What was probably designed by this subdivision was to include such judgments as should be recovered for moneys wrongfully withheld from the court or one of its officers by the defendant, which the court itself would be required to hold for or distribute among parties entitled to receive it. A direction contained in the judgment, as this was, made to pay the final costs to the attorneys, could not well be included within the language of this provision for they are not the officers intended to be included in the subdivision.

The practical effect of Baker v. Baker (23 Hun, 356), and People v. Reilly (25 Hun, 587), is to sustain this construction of these different provisions of the Code. It is true that in Lansing v. Lansing (41 Hun, 248) costs were included in the order made for the punishment of the husband, but as the order also included money required to be paid by him for the benefit of his wife, he could not be relieved from his imprisonment under the order until that payment had been made, even though the further direction for the payment of the costs was unauthorized. People v. Jacobs, 5 Hun, 428–433, and affirmed 66 N. Y., p. 8.

The case of Park v. Park (80 N. Y., 156) in no manner conflicts with this construction of these provisions of the Code. There the husband was punished for disobeying a lawful mandate of the court, and the costs required to be paid by him were not the costs of the action, but the costs of the proceeding to punish him for his contempt. What was said in the course of the opinion concerning the right to punish the husband for the non-payment of costs is to be received and understood with this qualification, for such costs clearly appear to have been the costs considered by the General Term when the case was heard and decided there. 18 Hun, 466.

The case of Howe v. Howe (5 Weekly Digest, 460) arose before all the present provisions of the Code went into effect. The point could not therefore be there considered as it has now been presented, and that circumstance may have led to the decision which was then made, and, as already suggested, the subdivision upon which Pritchard v. Pritchard (4 Abb., N. C., 298) was decided, cannot be so construed as to include a judgment for the recovery of final costs in an action for a separation. The direction, though formally requiring the costs to be paid to the attorneys, was in substance and effect no more than a final recovery of the costs by the plaintiff in this action against the defendant.

The order from which the appeal has been taken should be reversed and an order entered denying the motion, but without costs. —*N. Y. Daily Register.*

A GOVERNMENT clerk applied to the head of his department for leave of absence, in order to attend the christening of his youngest boy. "How old is the child?" "Four days old." "Very good," said the chief clerk;" but two months ago I gave you leave of absence to bury your wife. What have you to say?" For a moment the clerk was dumb; then, putting a bold face on it, he said: "I beg your pardon; my little boy is a posthumous child."

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Supreme Court of California.

GALLAGHER *vs.* MARKET STREET R. R. CO.

Evidence: Personal Injuries; Reading Medical Works to Jury.—Medical works cannot be read by counsel to the jury to prove the nature of injuries received by the plaintiff and their probable effect.

Appeal from San Francisco.

Action in damages for personal injuries caused by the wrongful expulsion of plaintiff by the conductor from a street car. On the trial, a witness who was a physician and surgeon testified that a medical work known as "Gross on Surgery" was "a standard work on surgery, and a good authority on the subject on which it treats." Upon this, counsel for plaintiff claimed the right to read from the book to the jury as to wounds. To the right of the plaintiff to read the book, or any part of it, as evidence, and to each offer of evidence, as it was made, and to the reading from the book at all, the defendant objected upon the ground that nothing contained in the book was relevant, material or competent evidence; but the objections were severally overruled, and the plaintiff read the book at great length to the jury as evidence. The defendant appealed.

MCKEE, J., in delivering the opinion of the court, said: In People v. Wheeler, 60 Cal., 581, we held it was error to permit the district attorney, against the objection of the defendant, in the trial of a criminal action, to read, in his closing argument to the jury, as part of his argument excerpts from Brown's Medical Jurisprudence of Insanity, which tended to sustain the theory of the prosecution upon the question of the insanity of the defendant (one of the questions at issue in the case), without having given the book in evidence or proved that it was a work of standard authority. But in this case such preliminary proof was made, and, being made, the book was offered and read in evidence. The question arises, therefore, whether a medical book, containing the author's opinions and views upon the subject of which it treats, is admissible in evidence to prove the nature of injuries, sustained by the plaintiff in the action, and their probable effect? Under common law procedure it was not competent to read books of science to a jury as evidence, because the statements therein contained were not only wanting in the sanctity of an oath, but were made by one who was not present, and was not liable to cross-examination. For that reason they were excluded, notwithstanding the opinion under oath of scientific men, that they were books of authority. Ashworth v. Kittridge, 12 Cush., 193; Commonwealth v. Wilson, 1 Gray, 337; Washburn v. Cuddihy, 8 Ib., 430; Melvin v. Easely, 1 Jones, N. C., 387; Carter v. State, 2 Ind., 617; Fowler v. Lewis, 25 Tex., 380. But it is contended that the common law rule has been changed by the code law. Section 1936, C. C. P., makes "Historical works, books of science or art, and published maps or charts, when made by persons indifferent between the parties, . . . *prima facie* evidence of facts of general notoriety and interest," and the question arises whether such books, which were not regarded before the adoption of the codes as competent evidence, are not, by force of that provision of the code, made competent. Doubtless the intention of that legislation was to extend the rule of evidence rather than to restrict it. But the extension is limited by the terms "facts of general notoriety and interest." What are "facts of general notoriety and interest?" We think the terms stand for facts of a public nature, either at home or abroad, not existing in the memory of men, as contradistinguished from facts of a private nature existing within the knowledge of living men, and as to which they may be examined as witnesses. It is of such public facts, including historical facts, facts of the exact sciences, and of literature or art, when relevant to a cause that, under the provisions of the code, proof may be made by the production of books of standard authority. So Mr. Justice Story, in Morris v. Lessees, etc., 7 Pet., 558, speaking upon this subject, says: "Historical facts of general and public notoriety may indeed be proved by reputation, and that reputation may be established by historical works of known character and accuracy. But evidence of this sort is confined in a great measure to ancient facts which do not presuppose better in existence; and where, from the nature of the transaction, or the remoteness of the period, or the public and general reception of the facts, a just foundation is laid for general confidence. But the work of a living author, who is within the reach of the process of the court, can hardly be deemed of this nature." And the appellate court of New York says: "Such evidence is only admissible to prove facts of a general and public nature, and not those which concern individuals or mere local communities." McKinnon v. Bliss, 21 N. Y., 210. See also Missouri v. Kentucky, 11 Wall., 395. Such facts include the meaning of words and allusions, which may be proved by ordinary dictionaries and authenticated books of general literary history, and facts in the exact sciences founded upon conclusions

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reached from certain and constant data by processes too intricate to be elucidated by witnesses when on examination. 1 Wharton on Ev. § 667. Thus mortuary tables for estimating the probable duration of the life of a party at a given age, chronological tables, tables of weights, measures and currency, annuity tables, interest tables, and the like, are admissible to prove facts of general notoriety and interest in connection with such subjects as may be involved in the trial of a cause. Wager v. Schuyler, 1 Wend., 553; Schell v. Plumb, 55 N. Y., 592; Mills v. Catlin, 22 Vt., 98; Donaldson v. R. R. Co., 18 Iowa, 291.

But medicine is not considered as one of the exact sciences. It is of that character of inductive sciences which are based on data which each successive year may correct and expand, so that what is considered a sound induction last year may be considered an unsound one this year, and the very book which evidences the induction, if it does not become obsolete, may be altered in material features from edition to edition, so that we cannot tell, in citing from even a living author, whether what we read is not something that this very author now rejects. Wharton on Ev., § 665. And as we said in Wheeler's case, *supra*, "If such treatises were to be held admissible, the question at issue might be tried, not by the testimony, but upon excerpts from works presenting partial views of variant and perhaps contradictory theories."

Judgment reversed and cause remanded for new trial.

NOTES OF RECENT DECISIONS.

Question of Widowhood.—A mutual benefit association issued to A, a member, a certificate whereby certain moneys were payable after his decease to his widow, and if there was no widow, then to his children. A married his first wife in 1842, in Germany. He came to New York in 1853, and there he formally intermarrried with the respondent in 1860, she not being at the time aware that he was under disability of a former marriage. His wife in Germany died in 1878, and he died in 1882. The respondent claimed the money as the widow, and the children of the marriage in Germany also claimed it, for the reason that respondent's intermarriage with the deceased was illegal, inasmuch as it took place while the wife married by him in Germany was living. When A learned of the death of the wife in Germany, he said to respondent, if she was ever in doubt that she was his lawful wife she was sure of it then, and continued to live with her as his wife, treating her as such until his death. *Held*. it may be presumed that after receiving information of the decease of the wife in Germany, both parties agreed henceforth to live together as husband and wife, and therefore at A's decease she became entitled as his widow, within the terms of the certificate, to the money payable by means of it. [The Polar Star Mutual Benefit Association of the City of New York v. Lena Boniface. S. C. N. Y.]

Master and Servant: Defects in Machinery; Negligence of Laborer.—Held, 1. An employer is responsible for injuries to his employees resulting from defects in the tackle, machinery or appliances provided for their use. Tackle used in work, such as loading or unloading a vessel, ought to be amply sufficient to withstand any strain that is likely to be put upon it by ordinary unskilled laborers; and where tackle breaks, without any extraordinary strain upon it, it will be presumed to be insufficient, though it may have been used previously for the same purpose without accident. 2. A laborer engaged in work, such as loading or unloading a vessel, is only bound to use ordinary care, and the employer is not relieved from responsibility by showing that if the laborer had used the greatest skill and care the accident might not have happened. [Ross v. Langlois. Court of Queen's Bench. 8 Can. Leg. News, 152.]

1. *Responsibility of Township: Knowledge.*—Plaintiff was walking along the public road of a township carrying a lighted lantern; when in the vicinity of certain oil wells an explosion of gas occurred, by which he was severely injured. At this place a small pipe had been laid under the highway by one Patterson, to convey gas from his oil well on one side of the road to the other side where he was drilling another well. On the traveled part of the road the pipe was buried about a foot, on the gutters it was exposed. About an hour before the accident occurred a wagon coming in contact with the exposed part had broken the pipe, and caused the escape of gas. *Held*, that the township, having no knowledge of the breaking of the pipe, or the fact that it had been built across the road, was not liable for the injury to the plaintiff.

2. *Responsibility of City.*—The same rule does not apply to the supervisors of a large and sparsely settled township, where an obstruction has been placed on a highway seldom traveled, as would apply to a city or borough where such an obstruction would be likely to be brought speedily to the notice of the authorities. [Otto Township v. Wolf, S. C. Pa.; Pittsburg Leg. Jour., July 1, 1885.]

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1. *Replevin; Demand.*—In replevin, proof of any circumstance which is satisfactory to the jury that a demand for the property would have been unavailing is sufficient to excuse proof of demand.

2. *Ibid.; Ibid; Evidence; Answer.*—The defendant, in his verified answer, averred that he would not have delivered the property had demand been made. *Held*, sufficient to excuse proof of demand. [Wood v. McDonald; Sup. Court of Cal., March 31, 1885.]

1. *Attachment: Debtor Suing in Another's Name.*—A, owing a debt to B, who was indebted to C, obtained an assignment of C's claim on B, and brought a suit on the claim in C's name, garnishing himself as debtor of B. *Held*, that the law would not look beyond the record to determine who were parties to the suit.

2. *Ibid.; Parties; Debtor Suing in His Own Name.*—Whether a party can bring suit in his own name and garnish himself as debtor of the defendant, *quære?* [Beach v. Fairbanks; Sup. Court of Errors of Connecticut, 1884; 52 Conn.]

IN A suit on a promissory note, the defence was that the note was given for a note of like amount placed in defendant's hands for collection, and was not to be paid unless the note so handed to the defendants was collected by him. This was directly contradicted by the plaintiff. *Held*, that the court below should have given a binding instruction to the jury to find for the plaintiff.

The uncorroborated testimony of a single witness contradicting a writing, which writing is corroboroted by plaintiff's testimony, is not sufficient to overthow the written contract. [Philips v. Meily, S. C. Penn., June 11, 1884.]

IN AN action to restrain the infringement by the defendant of the plaintiff's patent for telephones, one of the defenses raised on behalf of the defendant was that the alleged pirated articles were only used in the defendant's workshop for his pupils to experiment upon, and, if necessary, pull to pieces, the plaintiff's patented articles being too expensive to buy for such a purpose, and it was contended that such a user would not be an infringement, it not being a user for profit, which it was admitted must include not only pecuniary profit, but also any advantage to the defendant. *Held*, that such a user would be a user for the profit or advantage of the defendant, and consequently an infringement of the plaintiff's patent. [United Telephone Company v. Sharples; English Chan. Div., Feb. 10 1885.]

1. *Arbitration: Meeting; Notice.*—The award of arbitrators, appointed under a submission, rendered without fixing a day of meeting or without notice of such meeting, to either party, is a nullity.

2. *Ibid.; Refusal of One Arbitrator to Hear and Consider Testimony.*—The refusal of one of the arbitrators and of the umpire to hear and consider testimony on contested matters is fatal to the validity of the award. [Dreyfous v. Hart; Supreme Court of Louisiana, 1884.]

1. *Municipal Corporation: Liability for Discretionary Acts of Officers.*—A city is not responsible for the acts of its officers in whom a discretion has been confided.

2. *Ibid.; Ibid.; Corrupt or Fraudulent Conduct.*—Such officers are alone responsible for corrupt or fraudulent conduct on their part. [The Mayor, etc., of Baltimore v. O'Neill; Court of Appeals of Maryland, October Term, 1884.]

1. *Covenant: Services of Minor; Parent's Right of Action.*—A father may maintain an action on a covenant by which defendant agreed with him to pay monthly wages for the services of plaintiff's son, although by the contract the wages are to be paid to the son. And the emancipation of the son is no defence, though the contract was executed by him as well as by his father.

2. *Damages: Covenant.*—In such an action plaintiff is entitled to recover his reasonable expenses incurred in obtaining new employment for his son after the wrongful discharge of the latter by defendant. [Dickinson v. Talmage; Supreme Judicial Court of Mass., Jan. 24, 1885.]

Gambling Contract: Principal and Agent; Broker.—Where the principal employs an agent to buy "futures," if the dealing be illegal as gambling transactions, the agent cannot recover his advances and commissions, as he is the active agency engaged in placing the contracts and directing the business. Where the parties intend in fact to buy actual grain, to be delivered at a future time agreed upon by them, it is not a gambling transaction, although they exercise the option of settling the difference in price rather than make the delivery; but if the original purpose be not to deliver the grain, but to use the form of a contract for a genuine sale, as a method of merely speculating in the fluctuations of the market price, the contract is void, although there be an option of veritable sale and delivery. It is a question of fact for jury to determine. [Kirkpatrick v. Adams, C. C. of U. S., W. D. of Penn., 20 Fed. Rep., 287.]

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IN KING v. OHIO & M. RY. CO., U. S. Circuit Court, District of Indiana, 22 Fed. Rep., 413, a company was held liable for the death of a passenger who was shot by a drunken man on the train, after the conductor had notice of the condition and dangerous character of the drunken man. The court held that, when the conduct of a passenger is such as clearly to show that he is dangerous, it becomes the duty of the persons in charge of the train to keep him in close custody and to disarm him, or to remove him from the train; and that, upon a change of men in charge of the train, the new men should be informed of everything known to those who retire which ought reasonably to be deemed important to the discharge of the carrier's duty, so that, if the new men fail to take charge of a person who has proved himself dangerous, the company is responsible for his acts.

The Courts.

SUPREME COURT OF THE DISTRICT OF COLUMBIA

GENERAL TERM.

June 29, 1885.

Stewart v. Smith. Partially heard.

Washington Market Co. v. Berkely. Argued and submitted.

Brown v. Moxley. Judgment below affirmed.

June 30, 1885.

Hewett et al v. W. U. Tel. Co. Remanded.

Kerngood v. Gersdorf. Remanded.

July 1, 1885.

Hewett et al. v. W. U. Tel. Co. Remanded for further proceedings.

Keyser v, Hitz et al.. Argued and submitted.

IN EQUITY.—New Suits.

June 26, 1885.

9515. Hannah J. Clarkson v. John W. Clarkson. For divorce. Com sol, Wm. A. Cook.

9516. The Atwell M'f'g Co. v. The Com'r of Patents et al. Injunction. Com sols, Stern and Peck. Defts sols, Church & Church.

9517. Sidney A Gilberg v. John F. Gilberg. For divorce. Com sol, A. B. Webb.

June 27, 1885.

9518. Charles C. Duncanson v The Consolidated Roncesvalles Silver Mining Co. et al. For surrender of certain certificates, stocks, &c. Com sols, Garnett and Davis.

9519. Dennis Brane v. Henry Larman et al. Creditor's bill. Com sol, R. B. Lewis. Defts sol, W. A. Cook.

June 30, 1885.

9520 Marian Chase v. Melville Chase. For divorce. Com sols, Riddle, Davis & Padgett.

July 1, 1885.

9521. John H. White u. Augustus P. Caushair et al. Specific performance. Com sols, Worthington & Heald.

9522. Albert C. Armstrong v George Ketcham. Injunction. Com sol, S. T. Drury. Defts sol, J. Ambler Smith.

July 3, 1885.

9523. Mary Woodland v. James Nelson. Partition Com sols, Hamilton and S .

CIRCUIT COURT.—New Suits at Law.

June 26, 1885

26257. William C. Johnston v. Thurston B. Johnston et al. Damages $5000. Piffs attys, Carusi & Miller. Defts atty, F. T. Browning.

26258 Same. Damages, $5000. Piffs attys, Same.

June 27, 1885.

26259. William G. B. Thorn et al. v. William Burdette. Ejectment. Piffs atty, B. H. Webb.

26260. Annie R. Smith, adm'x, v. Alexander Smith. Replevin. Piffs atty, C. Carrington. Def's atty, D E. Cahill.

26261. George Taylor v. William B. Moses. Damages, $50,000. Piffs attys, Christy and Bradley.

June 29, 1885.

26262. William G. Taylor et al. v. Walter T. Wyvill. Note, $133 25. Piffs atty, H. W. Garnett.

June 30, 1885

26263. Daniel Loughran v. Hamilton Adams. Judgment of Justice Bundy, $60.36. Piffs atty, Mills Dean.

July 1, 1885.

26264. The District of Columbia v. Timothy D. Daly. Certiorari. Defts atty, W. A. Cook.

26265. Charles A. Eldredge v. Elijah K. Brice. Acct., $525 Piffs atty. R B. Lewis.

July 2, 1885.

26266. John T. Arms v Henry Clay Jones. Plea of title. Piffs attys, Carusi & Miller.

July 3, 1885.

26267. Charles H. Burgess v. Kate Marr et al. Judg't of Justice Helmick, $85.

26268. Henry D. Cooke et al. v. Alonzo F Carman. Note, $209. Piffs attys, Hagner & Maddox.

22269. Edward B. Cottrel v George W. Stickney. Note, $626 98. Piffs attys, Hine & Thomas.

PROBATE COURT.—Justice Hagner.

July 3, 1885.

Estate of Wilhelmina Bondel. James L. Norris appointed administrator. Bond, $2,000.

In re guardianship of Gertrude and Ellen V. Douglass. Issues proposed to be tried by jury.

Estate of Anna Ridgeway. Remuneration of W. P. Williamson, executor.

Estate of Hunter Brooke. Letters of administration granted to Louisa H. Bailey and Lorenzo A Bailey.

Estate of S. A. H. Marks. Inventory of personal estate returned.

Estate of Joseph L. Savage. Inventory of personal estate returned.

Estate of Daniel Weed. Order authorizing administrator to sell books and furniture.

Estate of Michael Caton. Letters granted to Mary Caton Bond, $1000.

Estate of Horace Capron. Renunciation by widow of bequests and acceptance of dower.

Estate of John Frowley. Administrator's answer filed.

Estate of Henry N. Barlow. Administrator allowed to sell household and kitchen furniture.

Estate of George W. Riggs. Petition of Stephen Brown filed

Estate of Antoinette Beecher. Letters of administration granted to H B. Moulton. Bond, $1,500.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 3d, 1885.

In the matter of the Estate of Robert M. Reynolds, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by Orpha W. Reynolds.

All persons interested are hereby notified to appear in this Court on Friday, the 24th day of July next, at 11 o'clock, a m , to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: 27 H. J. RAMSDELL, Register of Wills.

FRANKLIN H MACKEY, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 29th day of June, 1885.

JOHN J. ALBRIGHT v. R. S. HARDESTY et al. } No 9504. Eq. Doc. 25.

On motion of the plaintiff, by Messrs. Worthington & Heald, his solicitors, it is ordered that the defendants, Hortense Hardesty, Elizabeth Hardesty and Julia Hardesty, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.

A true copy. Test: 27 R. J. MEIGS, Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Holding a Special Term for Orphans' Court Business. June 30th, 1885

In the case of Andrew B. Graham, Adm'r c. t. a. of Thomas Evans, deceased, the Adm'r c. t a. aforesaid has, with the approval of the Court appointed Friday, the 24th day of July, A. D 1885, at 11 o'clock, a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Adm'r c t.a will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 27 H. J RAMSDELL, Register of Wills.

F. E. ALEXANDER, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 3d, 1885.

In the matter of the Estate of Charles Clark, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Caroline Case, who prays that letters of administration may be granted to John J. Wilmarth.

All persons interested are hereby notified to appear in this court on Friday the 24th day of July next at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: 27 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

THEO. A. MILLS and others v. SUSAN E. MILLS and others. } No. 9042. Eq. Doc. 24.

It is, this 30th day of June, 1885, ordered, that the sales made and reported by T. A. Lambert, C. C. Cole and S. T. Thomas, trustees for the sale of the real estate of Clark Mills, deceased, being sales of lots numbered from one to twelve, both inclusive, of the second subdivision of said real estate made by said trustees, and being the whole of the real estate directed to be sold in this cause, be ratified and confirmed, unless cause to the contrary thereof be shown on or before the 30th day of July, 1885.

Provided, a copy of this order be published in the Washington Law Reporter once in each week for three successive weeks before said date.

The aggregate of said sales, as stated in said report, is $12,940 00.

W. S. COX, Justice.

A true copy. Test: 27 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 2d day of July, 1885.

MARY E. GLANCY v. PATRICK GLANCY. } No. 9605. Equity.

On motion of the complainant, by Mr. Oscar Nauck, her solicitor, it is ordered that the defendant, Patrick Glancy, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. W S COX, Justice.

A true copy. Test: 27 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. June 19th, 1885.

In the matter of the Probate of the Will of Mason Campbell, late of Washington, D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by Mary Adeline Campbell.

All persons interested are hereby notified to appear in this court on Friday, the tenth day of July, next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.

Test: 25 H. J. RAMSDELL, Register of Wills.

Legal Notices.

THIS IS TO GIVE NOTICE,

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Sarah Otterback, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of June next; they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 30th day of June, 1885.

HENRY B OTTERBACK,

W. WILLOUGHBY, Solicitor. 27 Administrator.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Mary Buckley, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 29th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of June, 1885.

27 PHEBE E LIVERMORE,

FRANKLIN H. MACKEY, Solicitor. Administratrix.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

THOMAS J. FISHER v. J. R. TUCKER et al. heirs of T. T. TUCKER. } Equity. No. 9305. Doc. 21.

ORDER OF PUBLICATION.

The object of the above entitled bill is to quiet the title of Thomas J. Fisher to sub lots 17, 18, 19, 23, 24, and 27 to 45, both inclusive, in square 151, in the city of Washington, District of Columbia, as against the defendants hereinafter named and John R. Tucker, M. C., Beverley Tucker, Laura Tucker and Jane S. Tucker, also defendants herein (who have been served in this cause in person), said defendants being averred by the bill to be all of the heirs of Thomas Tudor Tucker and non-residents of the District of Columbia. Plaintiff herein claims title to the before described property under color of title of tax-deed made in 1840, and by virtue of quiet, peaceable, open, notorious, and continuous adverse possession in himself and his predecessors in title for more than twenty years; and in appearing to the court that Fannie Bland Graham, J. R. Graham, Mary Tucker Magill, Evelina Powell, W. L. Powell, Virginia Edwards, John E. Edwards, Elizabeth Dallas Tucker, Virginia B. Tucker, Dallas Tucker, Hattie A. Tucker, Cassie D. Brown, John T. Brown, John Randolph Tucker, Emma B. Tucker, Evelina T. Lucas, D. B. Lucas Nannie S. McLaughlin, St. George T. Brooke, I. Fairfax McLaughlin, Mary B. Brooke, Frank J. Brooke, Gay Bentley Brooke, D. Tucker Brooke, Lucy Higgins Brooke, Henry L. Brooke, Elizabeth D. Brooke, Laura Beverley Bedinger, Everett W. Bedinger, Elizabeth Gilmer Tucker, Walker Gilmer Tucker, Lizzie Edwards Tucker, Evelina Tucker, Lucy Richardson, Robert B. Richardson, Annie Tyler, Lyon G. Tyler, Eliza Taylor Tucker, Alfred B. Tucker, H. Tudor Tucker, Cynthia B. T. Coleman, Charles W. Coleman, B. St. George Tucker, Eliza C. Tucker, Fanny B. B. T. Taliaferro, Julia Clark Tucker, Nathaniel Beverley Tucker, William Francis Peyton Tucker, Ada B. Lewis Tucker, Virginia Tucker, Virginia Lewis Tucker, Francis M. Tucker, Mary Thornton Tucker, Nathaniel Beverley Tucker, John R. Bryan, Delia Page, John R. Page, Fanny Carmichael, S. W. Carmichael Georgia B. Grinnan, A. G. Grinnan, John R. Bryan, jr. Margaret R. Bryan, St. George T. C. Bryan, Joseph Bryan, Isabel S. Bryan, C. B. Bryan, Mary S. C. Bryan, Fanny Bland Brown, H. Peronneau Brown, Virginia C. Braxton and St. George T. Coalter are non-residents; it is, therefore, this 15th day of June, A. D. 1885,

Ordered and adjudged, That the complainant, by causing a copy of this order to be inserted in the Evening Star a newspaper published at Washington, D. C., once in each of three successive weeks before the 17th day of September, A. D. 1885, give notice to the said absent defendants of the object and substance of this bill, and warn them to appear in this court in person or by solicitor on or before the 17th day of September next, to answer the premises and show cause, if any they have, why a decree ought not to be passed as prayed.

A. B. HAGNER.

HILLYER & RALSTON, Plaintiff's Solicitors.

A true copy—test: 25 R. J. MEIGS, Clerk.

By M. A. CLANCY, Assistant Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 27th day of June, 1885.

FRANKLIN SCHOYER } No. . Equity Docket.
v.
CORA SCHOYER. }

On motion of the plaintiff, by Mr. H. T. Taggart, his solicitor, it is ordered that the defendant, Cora Schoyer, cause her appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.
True copy. Test: 26 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Samuel S. A. H. Marks, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 26th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 26th day of June, 1885.

ARKANSAS G. MARKS,
26 LEONORA MARKS,
HENRY WISE GARNETT, Solicitor. Administratrices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Mary H. Dorsey, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 26th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of June, 1885.

WORTHINGTON DORSEY,
WM. F. MATTINGLY, Solicitor. 26 Executor.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Angelica Simpson, late of the District of Columbia, deceased

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of June, 1885

MARGARET K. SIMPSON,
W. B. LORD, Solicitor. 26 Executrix.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, LettersTestamentary on the personal estate of Robert H. Graham, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 27th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of June, 1885.

ANN S. GRAHAM,
WM. G. HENDERSON, Solicitor. 26 Executrix.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of John Travers, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 11th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of June, 1885.

P. B. DUNN, Executor.
FILLMORE BEALL, Solicitor. 26

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business. June 19th, 1885.

In the case of Charles M. Matthews, Executor of Lucinda S. Matthews, deceased, the Executor aforesaid has, with the approval of the court, appointed Friday, the 10th day of July, A. D. 1885, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 25 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. June 19, 1885.

In the matter of the Estate of James A Powlett, late of the City of Washington, D C, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Charles E. Creecy.

All persons interested are hereby notified to appear in this court on Friday, the 10th day of July next, at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WALTER S COX, Justice.
Test: 25 H. J. RAMSDELL, Register of Wills.
V. B EDWARDS, Solicitor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Nora Maclay, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of June, 1885.

R. ROSS PERRY,
25 Administrator.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Margaret Bain, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2nd day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2nd day of June, 1885

25 W. R. WOODWARD, Executor.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Ernst Loeffler, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 17th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of June, 1885.

25 CHARLES A. WALTER, Executor.

THIS IS TO GIVE NOTICE:

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Rebecca E. Herron, late of the District of Columbia, deceased

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of June, 1885.

JAMES WHITLEY HERRON,
26 Administrator, Star Office.

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Legal Notices.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Elizabeth A. Pumphrey, late of the District of Columbia deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of June, 1885

CHASTAIN C. MEADOR,

JOSEPH J. DARLINGTON, Solicitor. 25 Executor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Holding a Special Term for Orphans' Court Business, June 13th, 1885.

In the matter of the Estate of George Smith, late of Hartford, Conn., deceased

Application for Letters of Administration on the Estate of the said deceased has this day been made by George O. Chipman.

All persons interested are hereby notified to appear in this court on Friday, the 10th day of July next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: 24 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia. the 27th day of May, 1885.

WM. TAYLOR SNYDER, Trustee, v. ADELAIDE E. BAKER et al. } No. 9464. Eq. Doc. 24.

On motion of the plaintiff, by Mr. Charles D. Fowler, his solicitor, it is ordered that the defendants, Adelaide E. Baker, Sarah G. Penasco de Gale, Norberta Penasco de Gale, R. Carter Wellford, B. Randolph Wellford, Armistead N. Wellford, Virginia T. Lewis, administratrix w. a., Virginia T. Lewis, Henry G. Lewis, Trapiere S. Lewis Etta T. Key, Etta T. Smith, Joseph Hall Key, Charles E. Key, Harriet H. Key and all unknown heirs of H. G. S. Key and Henrietta H., his wife, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day, otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER. Justice.

A true copy. Test: 25 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 22d day of June, 1885.

ELIZA B. CAUSTEN v. JAMES H. C. YOUNG et al. } No. 9489. Eq. Doc. 24.

On motion of the plaintiff, by Messrs. James H. Taylor and George C Payne, her solicitors, it is ordered that the defendants, James H. C. Young, Josephine de Carvallo, Manuel Carvallo, Victor Carvallo, Henrietta J. de Bueneventi, Marino Bueneventi, Robert Shriver, Henry Shriver, Eliza Fundenburg, Stanley Fundenburg, Mary C. Swartzwalder, Henry Swartzwalder, Henrietta Shriver, Henry Johnson, Robert Shriver, administrator, Sarah Cresap, administratrix, cause their appearance to be entered herein on orbefore the first rule-day occuring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court *W. S. COX, Justice.

A true copy 26 Test: R J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

GEORGE T. JACOBS, Complainant, v JOHN W. POST et al., Defendants, } In Equity. No. 9335.

Upon consideration of the report of the trustee. Daniel O'C. Callaghan, and this this day filed, it is, this 26th day of June, A. D 1885, ordered that the sale of the Capital Stock of The Post Combination Sewing Machine Company, owned by the defendant, be, and the same shall stand finally ratified and confirmed, unless good cause to the contrary be shown on or before Saturday, the 18th day of July next.

Provided a copy hereof be published once a week for three weeks prior to said date in the Law Reporter.

The report states that the stock was bid off at $23 per share to George T. Jacobs.

W. S. COX, Justice.

A true copy. 26 Test: R, J. MEIGS, Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

WILLIAM SHARON v. J. R. TUCKER et al. heirs of T. T. TUCKER. } Equity. No. 9304. Doc. 24.

ORDER OF PUBLICATION.

The object of the above entitled bill is to quiet the title of William Sharon to sub lots 46 to 149, both inclusive, in square 151, in the city of Washington, District of Columbia, as against the defendants hereinafter named and John R. Tucker, M. C., Beverley Tucker, Laura Tucker and Jane S. Tucker, also defendants herein (who have been served in this cause in person), said defendants being averred by the bill to be all of the heirs of Thomas Tudor Tucker and non-residents of the District of Columbia. Plaintiff herein claims title to the before described property under color of title of tax-deed made in 1840, and by virtue of quiet, peaceable, open, notorious, and continuous adverse possession in himself and his predecessors in title for more than twenty years; and in appearing to the court that Fannie Bland Graham, J. R. Graham, Mary Tucker Magill, Evelina Powell, W. L. Powell, Virginia Edwards, John E. Edwards, Elizabeth Dallas Tucker, Virginia B. Tucker, Dallas Tucker, Hattie A. Tucker, Cassie D. Brown, John T. Brown, John Randolph Tucker, Emma B. Tucker, Evelina T. Lucas, D. B. Lucas Nannie S. McLaughlin, St. George T. Brooke, I. Fairfax McLaughlin, Mary B. Brooke, Frank J. Brooke, Gay Bentley Brooke, D. Tucker Brooke, Lucy Higgins Brooke, Henry L. Brooke, Elizabeth D. Brooke, Laura Beverley Bedinger, Everett W. Bedinger, Elizabeth Gilmer Tucker, Walker Gilmer Tucker, Lizzie Edwards Tucker, Evelina Tucker, Lucy Richardson, Robert B. Richardson, Annie Tyler, Lyon G. Tyler, Eliza Taylor Tucker, Alfred B. Tucker, H. Tudor Tucker, Cynthia B. T. Coleman, Charles W. Coleman, B. St. George Tucker, Eliza C. Tucker, Fanny B. B. T. Taliaferro, Julia Clark Tucker, Nathaniel Beverley Tucker, William Francis Peyton Tucker, Ada B. Lewis Tucker, Virginia Tucker, Virginia Lewis Tucker, Francis M. Tucker, Mary Thornton Tucker, Nathaniel Beverley Tucker, John R. Bryan, Delia Page, John R. Page, Fanny Carmichael, S. W. Carmichael Georgia B. Grinnan, A. G. Grinnan, John R. Bryan, jr. Margaret R. Bryan, St. George T. C. Bryan, Joseph Bryan, Isabel S. Bryan, C. B. Bryan, Mary S. C. Bryan, Fanny Bland Brown, H. Peronneau Brown, Virginia C. Braxton and St. George T. Coalter are non-residents; it is, therefore, this 15th day of June, A.D. 1885,

Ordered and adjudged, That the complainant, by causing a copy of this order to be inserted in the Evening Star a newspaper published at Washington, D. C., once in each of three successive weeks before the 17th day of September, A. D. 1885, give notice to the said absent defendants of the object and substance of this bill, and warn them to appear in this court in person or by solicitor on or before the 17th day of September next, to answer the premises and show cause, if any they have, why a decree ought not to be passed as prayed.

A. B. HAGNER.

HILLYER & RALSTON, Plaintiff's Solicitors.

A true copy—test 25 R. J. MEIGS, Clerk.

By M. A. CLANCY, Assistant Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Mary F. St. John, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of June, 1885.

L. COMPTON,

WM. K. DU HAMEL, Solicitor. 25 Executor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Horace Capron, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of June, 1886; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of June, 1885.

FRANK W. HACKETT, MARGARET CAPRON.

425 La ave, Solicitor. 25

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. June 26th, 1885

In the case of Annie C. Babcock, Executrix of Orville E Babcock, deceased, the Ex'x aforesaid has, with the approval of the court, appointed Friday, the 7th day of August, A D. 1885, at 11 o'clock a m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized with their claims against the estate properly vouched; otherwise the Executrix will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test 26 H J RAMSDELL, Register of Wills.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of Charles H. Manning, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 3rd day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 3d day of June, 1885

ELIZABETH B MANNING,
Administratrix c. t. a
23 57 D St., N. E.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 1st day of June, 1885.

J. DAVENPORT WHEELER, Complainant, v WILLIAM SHARON et al., Defendants. } No. 9469. Eq Doc 24.

On motion of the complainant, by Mr Reginald Fendall, his solicitor, it is ordered that the defendants William Sharon and Sarah Althea Hill, otherwise Sarah Althea Sharon, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
True copy. Test: 23 R. J. MEIGS, Clerk

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Sitting in Equity, June 26, 1885

MARY T. DAYTON et al. v CORNELIA H. DAYTON et al } 7801. Eq Doc. 21

It appearing to the Court that, in the order passed in this cause on the 18th day of June, 1885, the name of John Miller was, inadvertently and through a clerical error, inserted as the purchaser of lot numbered 22, in square numbered 512, instead of that of Albert F. Fox, who was the real purchaner thereof It is, by the Court, this 26th day of June, 1885, ordered, that said order be stricken out and annulled.

And in is further ordered that the sale of said lot to said Albert F Fox be confirmed, in accordance with the written offer of said Fox annexed to the report of James M. Johnston, trustee, which was filed herein on June 17th, 1885

Provided the usual publication be made requiring cause to be shown against the ratification of said lot.

W S. COX, Justice.
A true copy. 26 test: R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business. June 26th, 1885.

In the case of Joseph J. Waters, Administrator of Henry Douglas, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 17th day of July A. D. 1885, at 11 o'clock, a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test; 26 H. J. RAMSDELL, Register of Wills.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

SAMUEL M. CASTELL v JOHN H. CASTELL et al. } 6894. Eq Doc. 19.

On hearing the report of Joseph F. Hodgson, trustee, it is, this 5th day of of June, 1885, ordered, that the sales reported by said trustee, be confirmed unless cause to the contrary be shown on or before the 5th day of July, 1885; Provided that a copy of this order be published in the Washington Law Reporter once a week for three weeks before said day.

The report states the amount of sales to be $3,800.

By the Court. A. B. HAGNER.
A true copy. Test 23 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

MARY B. MOSHER et al. v THEODORE MOSHER et al } In Equity. No. 8911.

The trustees in the above-entitled cause having made and filed their report of sales of the real estate in the said cause, it is, this 24th day of June, A. D. 1885, ordered, adjudged and decreed, that said sales of the said real estate and said trustees' report be, and the same are hereby ratified and confirmed, unless cause to the contrary thereof be shown on or before the 27th day of July, A D. 1885.

Provided a copy of this order be published in "The Evening Star," and the "Washington Law Reporter," two papers published in the city of Washington, District of Columbia, once in each of three successive weeks before the 27th day of July, A. D. 1885.

The report shows the amount of sales to be $24,365.12.

By the Court. W. S. COX, Justice.
A true Copy. Test: 26 R. J MEIGS, Clerk

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, this 24th day of June, 1885.

JAMES A. KING et al v JOHN W. KING et al } In Equity. No. 9349.

Upon the trustee's report of the sale of part of lot 7, in square 752, in this cause mentioned, it is, this 24th June 1885, ordered, that said sale is hereby ratified and confirmed unless cause to the contrary be shown on or before 24th July, 1885.

Provided this order be published in the Washington Law Reporter once a week for three weeks before said day.

W. S. COX, Justice.
A true copy 26 Test: R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Charles R Clifton, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of June next; they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 12th day of June, 1885.

KATIE CLIFTON,
O. T. THOMPSON, Solicitor. 24 Executrix.

THIS IS TO GIVE NOTICE

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration on the personal estate of Caesar Smith, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of June, 1885.

ANNIE B. SMITH,
AMPBELL CARRINGTON, Solicitor 25 Administratrix.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Peter Monaghan, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of June, 1885.

THOMAS GEARY,
SAMUEL C. MILLS, Solicitor. 24 Executor.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

KATE MARR, guardian, against FRANK T. BARRY and others. } 7023 Equity Docket 20

Henry E Davis the trustee appointed in the above-entitled cause, to make sale of subiots numbered from five (5) to ten, (10) both inclusive, in square numbered seven hundred and twenty-seven (727) in the city of Washington, having reported to the Court an offer by Thomas A Mitchell to purchase the said lots at and for the sum of eleven thousand five hundred and twenty five (11,525) dollars, cash, it is, this 10th day of June, A. D. 1885, ordered, that the said trustee be, and he hereby is, authorized and directed to accept the said offer, unless cause to the contrary be shown on or before the 10th day of July, A. D. 1885 Provided a copy of this order be published in the Washington Law Reporter once a week for three (3) weeks before said last-mentioned day

A B. HAGNER.

A true copy. Test: 24 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 9th day of June, 1885.

WILLIAM M. WRIGHT v. FLORENCE B WRIGHT. } No 9475. Eq. Doc. 24

On motion of the plaintiff, by Mr. Warren C Stone, his solicitor, it is ordered that the defendant, Florence B Wright, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.

True copy. Test: 24 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

RUDOLPH EICHHORN v. MARIA F. CONLAN et al. } No. 5181. Equity.

Wm F. Mattingly, trustee, having reported to the Court that pursuant to the decree, he sold at public auction on May 14th, 1885, to the several purchasers named in said report, said lots, Nos. 47 to 68, both inclusive, in square No. 621, in the city, for the aggregate sum of $11,365 75, it is this 1st day of June, A. D. 1885, ordered, that the complainantis hereby excused from complying with the terms of sale as to the lots purchased by him, and that all of said sales be finally ratified and confirmed on the seventh day of July, 1885, unless cause to the contrary be shown before said day. Provided, this order be published in the Washington Law Reporter once a week for three successive weeks prior to said day.

A. B. HAGNER.

A true copy. Test: 23 R. J MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. June 13th, 1885.

In the case of Daniel Sutter, Administrator of Benjamin P. Sutter, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 17th day of July, A D. 1885, at 10 o'clock a. m, for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the said Adm'r will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

Test: 24 H J. RAMSDELL, Register of Wills.

JAMES H. SAVILLE, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

CHARLES A. BEST v PETER BEST et al. } 8375. Eq. Doc 22

The trustee in the above entitled cause having reported to the Court that he has made sale of lot No 4 in square No. 864, to Benjamin F. Ferguson and Patrick Bryan, at 25 cents a square foot, it is, this 12th day of June, 1885, ordered, adjudged and decreed that the said sale be, and it is, hereby ratified and confirmed unless cause to the contrary be shown on or before the 12th day of July, 1885. Provided, a copy of this order be inserted in the Washington Law Reporter once a week for three successive weeks before the 12th day of July, 1885.

A B HAGNER.

A true copy. 24 Test: R. J. MEIGS, Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 20th day of May, 1885.

IDA MAY STANSBURY et al. v. FRANK INGLEHART et al. } No. 7781 Eq Doc 21.

On motion of the plaintiffs, by Mr. J. J. Darlington, their solicitor, it is ordered that the defendant, Annie H Goell, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B HAGNER, Justice.

A true copy. Test: 24 R J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 8th day of June, 1885.

PAULINE M. POWELL v. WILLIAM POWELL. } No 9332.

On motion of the plaintiff, by Mr. William A. Cook, her solicitor, it is ordered that the defendant, William Powell, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B HAGNER, Justice.

True copy. Test: 24 R. J. MEIGS, Clerk

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 10th day of June, 1885

MIRANDA C. DUNNINGTON v. WALTER W. DUNNINGTON. } No. 9428.

On motion of the plaintiff, by William A. Cook, her solicitor, it is ordered that the defendant, Walter W Dunnington, cause his appearance to be entered herein on or before the first rule-day, occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A B HAGNER, Justice.

True Copy Test: 24 R. J MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 10th day of June, 1885

JOHN HENRY SMITH v. RICHARD SMITH et al. } No. 9455 In Equity.

On motion of the plaintiff, by Mr. Eugene F. Arnold, his solicitor, is it ordered that the defendants, Eliza Smith, Betsey Smith, Charles Smith and Christian Smith cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.

A true copy. Test: 24 R. J. MEIGS. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 2d day of June, 1885.

J. B. BRYAN & BRO v. JEREMIAH HARALSON } No. 26,144. Law.

On motion of the plaintiffs, by Mr. E H. Thomas, their solicitor, it is ordered that the defendant, Jeremiah Haralson cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. W. S COX, Justice

True copy. Test: 23 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t a. on the personal estate of Virginia Taylor, late of the District of Columbia, deceased.

All persons having claims again the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 22d day of May next; they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 22d day of May, 1885.

23 VIRGINIA TAYLOE LEWIS,

HENRY WISE GARNETT, Solicitor Administratrix c t.a.

THIS IS TO GIVE NOTICE

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John McClelland, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 29th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of May, 1885.

23 JOHN McCLELLAND, Jr.,

HENRY WISE GARNETT, Solicitor. Administrator.

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Washington Law Reporter

WASHINGTON - - - - - - - - July 11, 1885.

GEORGE B. CORKHILL - - - EDITOR

Where the Judges will Spend the Vacation.

Chief Justice WAITE is travelling in Europe.

Mr. Justice MILLER is at Block Island.

Mr. Justice BRADLEY is at his old home in New Jersey.

Mr. Justice FIELD is in California.

Mr. Justice WOODS will go to Europe.

Mr. Justice HARLAN is near Winchester, Virginia.

Mr. Justice MATTHEWS will go to North Carolina.

Mr. Justice GRAY will go to Boston.

Mr. Justice BLATCHFORD is at Newport.

Chief Justice CARTTER is in Kansas.

Judge MAC ARTHUR goes to Wisconsin and then to Saratoga.

Judge HAGNER will not leave the city till August and will probably go to the Catskill mountains and Saratoga.

Judge COX will go to Narragansett Pier.

Judge JAMES will go to Connecticut.

Judge MERRICK will probably remain in Maryland.

IT is more than probable that the parties charged with engineering the suit of The People *vs.* Marx, in the Court of Appeals of New York, in which the court held the law prohibiting the manufacture of oleomargarine to be unconstitutional, will not gain much by their victory. No one can read the statement of the case without being convinced that the opinion was rendered on a statement of charges in which the real question was adroitly avoided. A similar law has been held constitutional by the federal courts, and there can be no question that the Court of Appeals of New York will concur whenever a proper case is before them. The manufacture and sale of oleomargarine and similar compounds are, as at present conducted, a fraud of the worst character, and should be severely punished. There can be no objection to the manufacture of oleomargarine alone, but it should be sold as that and not as butter. The great profit is in selling it as genuine butter. If it is what is claimed for it let it be placed on the market with a different color. Let the manufacturers be required to color it pink in place of yellow as they do now, and by this means the fraud now so successfully carried on could be prevented.

THE Supreme Court of Pennsylvania, in holding that a son-in-law has no insurable interest in the life of his mother-in-law, has aimed another blow at this much abused class. The court sneeringly says that he is not a creditor of hers, nor in any manner legally liable for her support or maintenance, and that he could not inherit from her nor she from him. In fact that there is no consanguinity between them. The mere fact that he married her daughter gave him no pecuniary interest in the preservation of her life, and while the court does not in words say so, the inference is very plain, that it means to be understood that in the opinion of the court the son-in-law is so interested in getting rid of his mother-in-law, that to insure her life is a gambling contract of the worst kind.

A COURT in Pennsylvania has decided that unless persous look both ways in crossing a railroad track they cannot obtain damages for injuries they may receive. This gives cross-eyed people a decided advantage over those who can see straight, and in some measure mitigates the affliction of being cross-eyed.

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Supreme Court District of Columbia

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

IN RE PHILIP S. WALES.

Decided April 15, 1885.
Justices WYLIE and JAMES sitting.

1. An order directed by the Secretary of the Navy to a subordinate, commanding him to confine himself within certain limits is not such a restraint of personal liberty as will be reached by a writ of *habeas corpus*. The party is not under restraint, except so far as he chooses to obey the order.
2. In a *habeas corpus* proceeding the power of the court to look into the validity of an order of arrest is incidental to the inquiry into the lawfulness of an actual imprisonment. If the court find no imprisonment it has no power to examine into the validity of the order.

Application for a writ of *Habeas Corpus*.

THE CASE is stated in the opinion.

J. M. WILSON and F. P. B. SANDS for petitioner.

JOHN S. BLAIR for respondent.

Mr. Justice JAMES delivered the opinion of the court.

The petitioner shows that he is the Medical Director of the United States Navy and it appears that the Secretary of the Navy issued to him the following communication and order:

"WASHINGTON, *February 26th*, 1885.

"SIR: Transmitted herewith you will receive charges and specifications preferred against you by the Department.

"A general court-martial has been ordered to convene in rooms numbered 32 and 33, at the Navy Department, Washington, D. C., at 12 o'clock, noon, on Monday, the 9th proximo, at which time and place you will appear and report yourself to Rear-Admiral Edward Simpson, U. S. Navy, the presiding officer of the court, for trial. The judge-advocate will summon such witnesses as you may require for your defence.

"You are hereby placed under arrest, and you will confine yourself to the limits of the city of Washington."

The return of the Secretary of the Navy states:

"That the said Philip S. Wales is not now, nor was not at the time of issuing the annexed writ, in the custody or possession of or confined or restrained of his liberty by your respondent, other than appears by the papers marked A, B and C attached hereto and made a part of this return, and that the cause of such detention, if any there be, is fully shown in said exhibits."

In other words, it appears that what is characterized as a re-straint of liberty in this case, was exercised only by the order which I have just read.

The question presented is, whether the petitioner is under that kind of restraint for which the writ of *habeas corpus* is the proper remedy. What is meant by the statement, "You are placed under arrest?" The army regulations show that that is a military phrase which does not import close confinement. The order itself, however, without the assistance of the explanation which may be drawn from the regulations, defines precisely the character of the restraint. It is that the arrest consists of *confining himself* in his movements to the city of Washington.

Authorities were cited to us to the effect that words could constitute an imprisonment; but nothing of the kind was decided by these cases. It was only held that where an officer, having the power to make an actual, physical arrest, presented himself to a person and told him, "I arrest you," then the words imported that the officer took possession of him. The words did not constitute a deprivation of liberty, but were simply proof of the nature of the officer's conduct. His presence and demeanor were explained by what he said, and his presence and demeanor, not the words, had the effect to deprive the party of his liberty.

Here we have an order which simply informs the party that he shall confine himself to the limits of the city of Washington. As a matter of fact he could go where he pleased. His liberty is not restrained, except as he chooses to restrain himself by complying with the order rather than incur the consequences of disobeying it. If he is confined to the city of Washington, he confines himself. That, we think, disposes of the whole question. Dr. Wales is not under re-

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straint except so far as he chooses to obey a military order. He can disobey it at any moment and leave the District as freely as any person in the District can do so. He prefers to stay rather than incur the possible penalty of disobedience. In short, it is shown by his own petition that he is not under that kind of restraint from which a writ of *habeas corpus* will deliver a person. That writ contemplates actual, physical restraint.

With this view we have not thought it proper to examine into the validity of the order of arrest. Our power to look into that subject is incidental to the inquiry into the lawfulness of an actual imprisonment. If we find no imprisonment we have no power to examine the validity of the order.

There is another very good reason why we should not do so. If the petitioner should actually be deprived of his liberty and imprisoned under the sentence of the court-martial referred to, this court could be called upon again to look into that question; and it is not proper, as we think, to intimate any conclusion in anticipation of any such possible result.

Mr. Justice WYLIE. I wish to say just one word. The writ of *habeas corpus* will only lie for the purpose of restoring to liberty a man who has been unjustly imprisoned, and I suppose the proposition cannot be denied that, unless an action for false imprisonment could be maintained against the party who has done the act in question, the writ of *habeas corpus* will not lie in behalf of the person who is subjected to the proceedings. It is very clear, I think, that no action for false imprisonment would lie on behalf of Dr. Wales against the Secretary of the Navy for his order. If he could not maintain an action for false imprisonment, then he has not been imprisoned in such a way as to give him the benefit of *habeas corpus*.

On that subject I will read a few lines from Selwyn's Nisi Prius, page 915:

"False imprisonment is a restraint on the liberty of the person without lawful cause; either by confinement in prison, stocks, house, &c., or even by forcibly detaining the party in the streets against his will." For this injury an action of trespass *vi et armis* lies, usually termed an action for false imprisonment.

In a note to that there is a reference to the opinion of Judge Baldwin in the case of Johnson v. Tomkins, reported in 1 Baldwin, 601, which it appears to me is directly in point in this case:

"It is not necessary to constitute false imprisonment that the person restrained of his liberty should be touched or actually arrested, if he is ordered to do or not to do the thing, to move or not to move against his own free will, if it is not left to his own option to go or stay where he pleases, and force is offered or threatened, and the means of coercion are at hand, ready to be used, or there is reasonable ground to apprehend that coercive means will be used if he does not yield. A person so threatened need not wait for its actual application. His submission to the threatened and reasonably to be apprehended force is no consent to the arrest, detention or restraint of the freedom of his motion, he is as much imprisoned as if his person was touched or force actually used; the imprisonment continues until he is left at his own will to go where he pleases, and must be considered as involuntary till all efforts at coercion or restraint cease and the means of effecting it are removed."

But the presence of some sort of physical force to restrain the man of his liberty is always necessary to constitute the imprisonment. A mere moral force is not sufficient for the purpose. In the present case the consequence of the violation by Dr. Wales of this order is that, under the articles relating to the navy, he would lose his office. He can go if he chooses, but he would lose his office. That is the penalty. That is a moral influence. It is not the presence of physical force.

I have my doubts upon the other point, as to the power of a court-martial to try a man for negligence in the performance of his duties in connection with a bureau of the department, though I do not wish to commit myself upon that subject.

Demurrer overruled and writ dismissed.

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United States Court of Claims

THE UNION PACIFIC RAILWAY COMPANY

vs.

THE UNITED STATES.

1. The rule of the Supreme Court, in relation to appeals from the Court of Claims, now requires parties to submit to the court before any trial or request to find all the facts which they consider proven and deem material to the due presentation of the case in the findings of fact.
2. The court gives to such requests the fullest consideration and the most careful scrutiny. Without ruling upon each request separately, the court makes up an accurate finding in such way as to cover every material fact, and to present a clear and concise statement of the case for review of the law on appeal.
3. The old rule of the Supreme Court, requiring a ruling upon each separate request, was found impracticable and useless in practice and was repealed, and the present more satisfactory one adopted.

MOTION OF CLAIMANT.

The claimant, the Union Pacific Railroad Company and the Union Pacific Railway Company, now comes and states to the court that it deems it essential to the right determination of the matters in issue in the above entitled cases that the court should pass upon and find what is established by the evidence, embodied in the record in such cases regarding the several and respective requests for findings of fact as set forth in the requests for findings of fact heretofore filed in this case now hereto annexed and marked A and B, and made part of this motion; and therefore hereby again presents and files in the cases the said requests for such findings, and moves the court to find the same severally and respectively; or, in the event that the court should reach the conclusion that it ought to refuse such requests for such respective and several findings, then that the court will enter of record such refusal to so find as to each of the requests as to which the court shall so refuse to find.

JOHN F. DILLON,
SHELLABARGER & WILSON,
Attorneys for Claimants.

ORDER OF COURT.

The foregoing motion, to which are annexed 48 printed pages of requests for findings of fact, filed after the court had completed its findings and made the same known to the parties, is overruled on the ground that the court has fully complied with the rules of the Supreme Court in relation to appeals (Rules 4 and 5) in the findings already made, and is not bound to rule specifically on each request of the parties. Precisely the same requests were filed by the claimant before the trial of the case as required by Rule V of the Supreme Court and the rules of this court, now numbered 52, 53 (20 C. Cls., XIX). In connection with 34 printed pages of request filed by the defendants, they were each and all thoroughly examined and considered by the court, and were passed upon in its findings, which contained all the facts proven and deemed material to the due presentation of the case.

OPINION.

RICHARDSON, C. J., delivered the opinion of the court.

Rules IV and V of the Supreme Court, in relation to appeals from the Court of Claims, are as follows:

RULE IV.

In all cases in which either party is entitled to appeal to the Supreme Court, the Court of Claims shall make and file their findings of facts and their conclusions of law therein, in open court, before or at the time they enter judgment in the case.

RULE V.

In every such case, each party, at such time before trial, and in such form as the court may prescribe, shall submit to it a request to find all the facts which the party considers proven and deems material to the due presentation of the case in the finding of facts.

Formerly the following was Rule V, which is no longer in force:

"In all such cases either party, on or before the hearing of the cause, may submit to the court a written request to find specifically as to any matter of fact which such party may deem material to the judgment in the case: and if the court fails or refuses to find in accordance with such prayer, then such prayer and refusal shall be made a part of the record certified on the appeal to this court."

After several years trial, experience proved that the practice under the old Rule V led to great difficulties and embarrassments without contributing in any degree to the better presentation of the case. The requests for findings of fact filed by the parties were often so diffuse in language, and so interspersed with irrelevant matter, evidence and propositions of law either directly or inferentially, that a satisfactory ruling upon each one could not well be made, and if made its bearing upon the case, as presented by the findings of the court all connected together and drawn with reference to each other, was difficult to ascertain,

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Accordingly the Supreme Court changed that rule several years ago.

Under the rules as they now stand, the practice is to give to the requests of the parties the fullest consideration and the most careful scrutiny, and, without ruling upon each one separately, the court makes up accurate findings in such way as to cover every material fact asked for on either side, and to present to the Supreme Court on appeal a clear and concise statement of the case upon which questions of law arising may be there reviewed. Such a course we believe has been eminently satisfactory. The present motion is the first of the kind that has been made since the adoption of the existing rule of the Supreme Court, and even here no specific fact is requested, but only a specific ruling on each of the numerous requests for findings heretofore made by the claimant.

The motion is overruled.

Married Women Traders.

[American Law Register]

The discussion of this subject will fall under two main heads, first, the sources of married women's capacity to trade, how far they could trade at common law and in equity, and the effect of modern statutes; and second, the incidents of married women's capacity to trade—their rights, powers, obligations and disabilities, when engaged in trade under some common law, equitable or statutory capacity. Many points not directly involved must be referred to for the purpose of argument and illustration, and on such points the cases are not collected in this paper.

I. SOURCES OF MARRIED WOMEN'S CAPACITY TO TRADE.

Sec. 1. *General view.*—(*a.*) At common law generally a married woman could make no contract whatever; Norris v. Lantz, 18 Md., 260, 269; all her time and labor belonged to her husband (Seitz v. Mitchell, 94 U. S., 580, 584) as did all the present enjoyment of her property. See Mann's Appeal, 50 Penn. St., 375, 381. She had in fact no legal existence apart from her husband. White v. Wager, 25 N. Y., 325, 328; therefore she could not trade at all. Carey v. Burruss, 20 W. Va., 571, 575; 43 Am. Rep., 790; see Bradstreet v. Baer, 41 Md., 19, 23; Netterville v. Barber, 52 Miss., 168, 171; McKinnon v. McDonald, 4 Jones' Eq., 1. If a female trader married, the trade became her husband's (Ashworth v. Outram, L. R., 5 Ch. Div., 923, 929) and if she had been trading as partner, the partnership was dissolved. Alexander v. Morgan, 31 Ohio St., 546, 550. But when, owing to her husband's abandonment of the state, &c., she had the capacities of a feme sole (see Stewart Mar. & Div., sec. 177), and in some places by custom (Carey v. Burruss, 20 W. Va., 571, 575, 43 Am. Rep., 790), a married woman could trade as if unmarried.

(*b.*) *Wife's Earnings.*—As a married woman could not contract at all by the common law, she could not enter into any kind of engagement or employment on her own account, but all her time, services, wages and earnings of every kind, belonged to her husband. Cecil v. Juxon, 1 Atk., 278, 279; Glenn v. Johnson, 18 Wall., 476, 478; McLemore v. Pinkston, 31 Ala., 267, 270; Hinman v. Parkis, 33 Conn., 188, 197; Hazelbaker v. Goodfellow, 64 Ill., 238, 241; Cranor v. Winters, 75 Ind., 301, 303; Glover v. Alcott, 11 Mich., 471, 482; Raybold v. Raybold, 20 Penn. St., 308, 311; Hallowell v. Horter, 35 Id., 375, 380. Still her husband could agree that she should have her earnings, just as he could invest her with any property of his, except as against his creditors, and his agreement would be enforced in equity. McLemore v. Pinkston, 31 Ala., 267, 269; Peterson v. Mulford, 36 N. J. L., 482, 487; Hoyt v. White, 46 N. H., 45, 47; Elliott v. Bentley, 17 Wis., 591, 596. His agreement, however, could give her no personal capacity, but only the right, in his place and stead, to collect and keep the wages or rewards of her labors. Uhrig v. Horstman, 8 Bush., 172, 177; Stewart Mar. & Div., sec. 181. So by statute, in most States, the wife's earnings are secured to her separate use. See Martin v. Robson, 65 Ill., 129, 135, 16 Am. Rep., 578. These statutes were passed to protect wives from shiftless, improvident and dissipated husbands (Youngworth v. Jewell, 15 Nev., 45, 47), and were in form the earliest of the statutes relating to the trade of married women.

(*c.*) *The Increase of Wives' Separate Property.*—Although at common law all the interest, profits, rents and increase of a married woman's property vested in the husband just as the property itself did, except that the rents and profits of real estate vested in him as personalty, she had her separate estate first in equity and then by statute, and the increase of such estate was also separate property. Gore v. Knight, 2 Vern., 535; Barrack v. McCulloch, 3 Kay & J., 110, 119; Hoot v. Sorrell, 11 Ala., 386, 399, 404; Sanford v. Atwood, 44 Conn., 141, 143; Bongard v. Core, 82 Ill., 19, 21; Stout v. Perry, 70 Ind., 501, 504; Russell v. Long, 52 Iowa, 250, 252; Hanson v. Millett, 55 Me., 184, 189; Hill v. Chambers, 30 Mich., 422, 429; Williams v. McGrade, 13 Minn., 46, 52;

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Hutchins v. Colby, 43 N. H., 159, 161; Knapp v. Smith, 27 N. Y., 280; Holcomb v. Meadville, 92 Penn. St., 338, 343; Nelson v. Hollins, 9 Baxt., 553, 554; Braden v. Gose, 57 Tex., 37, 40; Dayton v. Walsh, 47 Wis., 113, 118; and therefore the products of all investments or uses of her separate property, though such products result in part from her own efforts and from the labor, skill and knowledge of her husband. Aldridge v. Muirhead, 101 U. S., 397, 399; Stout v. Terry, 70 Ind., 501, 504; Cooper v. Ham, 49 Id., 393, 400; Langford v. Grierson, 5 Bradf., 361, 365; Russell v. Long, 52 Iowa, 250, 252; Miller v. Peck, 18 W. Va., 75, 79-97. In a sense, therefore, as will be shown below, she can trade with her separate property.

(*d.*) *Summary of Sources.*—So that a married woman may be found on her own account earning money, trading or in business—the meaning of these words will be defined below—by virtue (1) of her right to her *earnings*, depending on her husband's consent or on statute; or (2) of her ownership of equitable or statutory *separate property;* or (3) of her capacities as a *feme sole*, due to the peculiar conduct of her husband or to statute; or (4) of her capacity to *trade*, due to custom or to statute.

Sec. 2. *Definitions.—Earnings, Trade, Business, etc.*—Although the distinction between personal earnings and the increase of property is quite clear (see Mitchell v. Sawyer, 21 Iowa, 582, 583; also, *supra*), and for this reason, as hereinafter shown, married women's separate property acts do not destroy a husband's rights to his wife's personal services. Glover v. Alcott, 11 Mich., 470, 480; it is very hard to draw any line between personal earnings and the profits of trade in which property is used. See Haight v. McVeagh, 69 Ill., 624, 629; Dayton v. Walsh, 46 Wis., 113, 120. The terms used in the books in connection with married women's trade are not sharply defined, and their meaning has given rise to considerable discussion.

(*a.*) *Earnings.*—"Earnings" are what is earned, gained or merited by labor, services or performances, wager or reward. Dayton v. Walsh, 47 Wis., 113, 120; and the earnings secured to a married woman by a statute are not confined to the results of manual labor—to wages for washing or sewing—but include the products of trade also. Haight v. McVeagh, 69 Ill., 624, 628; and the stock in trade of a married woman, bought with her earnings, is included within the term earnings. Lovell v. Newton, L. R., 4 C. P. Div., 7, 11, 12.

(*b.*) *Trade and Business.*—"Trade" or "business" means an employment to which the party devotes a considerable portion of her time, skill and means (Holmes v. Holmes, 40 Conn., 117, 119)—a business that is continuing in its nature and embraces many transactions. Holmes v. Holmes, 40 Conn., 117, 119; Proper v. Cobb, 104 Mass., 589, 590. Engaging in trade and business means not only trading in a commercial sense, but also being engaged in other employments which require time, labor and skill. Netterville v. Barber, 52 Miss., 168, 171; it means engaging in a business pursuit, mechanical, manufacturing or commercial. Nash v. Mitchell, 71 N. Y., 200, 203. To illustrate: Though a single transaction may be a business one, it does not make the party a trader. Holmes, 40 Conn., 117, 119; Netterville v. Barber, 52 Miss., 168, 171; horse dealing may be a business, but a woman who buys or sells a single horse is not necessarily in that business, Holmes v. Holmes, 40 Conn., 117, 120; Proper v. Cobb, 104 Mass., 589, 590; so, farming may be a business, but employing a man to work on one's farm does not make one a farmer by trade. Holmes v. Holmes, 40 Conn., 117, 120; renting a house may be a business transaction, and for the purposes of trade. Knowles v. Hull, 99 Mass., 562, 564; but a lease of rooms is not necessarily the contract of a trader. Holmes, 40 Conn., 117, 119; so a married woman's receipt and disbursement of her rents and profits, though done in a business way, does not constitute her a trader. Proper v. Cobb, 104 Mass., 589, 590; Nash v. Mitchell, 71 N. Y., 200, 203; nor is she a trader when she is not acting generally with the public, but is simply taking care of her own property. Proper v. Cobb, 104 Mass., 589, 590; or collecting or investing her income. Wheeler v. Raymond, 130 Mass., 247, 248, 249; Nash v. Mitchell, 71 N. Y., 200, 203. When she may trade she is not confined to any particular trade. Guttman v. Scannell, 7 Cal., 455, 459; she may not only engage in washing or sewing (Haight v. McVeagh, 69 Ill., 624, 628), dressmaking or millinery (Jassoy v. Delius, 65 Id., 469, 471; Tuttle v. Hoag, 46 Mo., 38, 40), keeping a dairy (Krouskop v. Shontz, 51 Wis., 204, 205, 207), keeping a boarding house (Chapman v. Briggs, 11 Allen, 546, 547; Dawes v. Rodier, 125 Mass., 421, 423; Harnden v. Gould, 126 Id., 411, 412), keeping a grocery or provision store (Haight v. McVeagh, 69 Ill., 624, 628; Abbey v. Deyo, 44 Barb., 374, 382), and in other pursuits specially adapted to her sex (Guttman v. Scannell, 7 Cal., 455, 459); but she may be a farmer (Camden v. Mullen, 29 Cal., 564, 566;

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Snow v. Sheldon, 126 Mass., 332, 333; Chapman v. Foster, 6 Allen, 136, 138; Abbey v. Deyo, 44 Barb., 374, 382; Krouskop v. Shontz, 51 Wis., 204, 205, 207; but see McDaniel v. Cornwell, 1 Hill, S. C., 428, 429), a miller (Cooper v. Ham, 49 Ind., 393, 416), a saloon or tavern keeper (Porter v. Gamba, 43 Cal., 105, 108; Nispel v. Laparle, 74 Ill., 306, 307; Silveus v. Porter, 74 Penn. St., 448, 449), a clothier (Guttman v. Scannell, 7 Cal., 455, 456; Bellows v. Rosenthal, 31 Ind., 116, 117), an ironmonger (Abbey v. Deyo, 44 Barb., 374, 382); she may work a mine or quarry, or may go into the lumber business. Netterville v. Barber, 52 Miss., 168, 172; though, if her trade is unsuited to her, this is a fact to be considered, if her husband's creditors are trying to show that the business is really his. Guttman v. Scannell, 7 Cal., 455, 459. So, she may engage in the professions—may devote her talents to literature, acting, singing (Dayton v. Walsh, 46 Wis., 113, 120); and, in fact, under a general power to trade, may follow any legitimate calling. Guttman v. Scannell, 7 Cal., 455, 459; Haight v. McVeagh, 69 Ill., 624, 628; Chapman v. Briggs, 11 Allen, 546, 547.

(*c*.) *Separate Trade.*—The trade of a married woman is usually spoken of as her "*separate*" trade; but the word "separate" refers rather to her independent status than to the mode in which she shall trade (Zimmerman v. Erhard, 58 How. Pr., 11, 14); and it does not mean that she shall trade alone, or prevent her living with her husband while trading (Lovell v. Newton, L. R., 4 C. P. D., 7 12; Newbrick v. Dugan, 61 Ala., 251, 253; Parker v. Simonds, 1 Allen, 258, 260), or allowing him to join in the business. Guttman v. Scannell, 7 Cal., 455, 459. In some States, however, it has been held that she must keep her business separate (Haas v. Shaw, 91 Ind., 384, 389, 396), or separate from her husband (Lord v. Parker, 3 Allen, 127, 129), and that the joint and mingled earnings of husband and wife are his property. Hawkins v. Providence, 119 Mass., 596, 599.

Sec. 3. *Capacity to Trade at Common Law.*—At common law when a husband was civilly dead, had abjured the realm, etc., his wife had the status of an unmarried woman (see Stewart Mar. & Div., secs. 175–178), and, therefore, could trade as such (Carey v. Burruss, 20 W. Va., 571, 575, 43 Am. Rep., 790); and in some States there are statutes to this effect declaratory of the common law. See Hannon v. Madden, 10 Bush, 664, 667; Woodcock v. Reed, 5 Allen, 207, 208. So, by the custom of London and other places, a married woman carrying on trade apart from her husband had the capacities of a *feme sole* (Petty v. Anderson, 2 C. & P., 38, 39; Beard v. Webb, 2 Bos. & P., 93, 97; Lovie v. Phillips, 3 Burr., 1776, 1783; Netterville v. Barber, 52 Miss., 168, 171; Carey v. Burruss, 20 W. Va., 571, 575; 43 Am. Rep., 790); but such a custom has never existed in this country (see Jacobs v. Featherstone, 6 W. & S., 346), except in South Carolina. McDaniel v. Cornwell, 1 Hill, S. C., 428, 429; Newbiggin v. Pellans, 2 Bay, 162, 165; Dial v. Neuffer, 3 Rich., 78, 79.

Sec. 4. *Capacity to Trade in Equity.*—In those States where a married woman is a *feme sole* in equity as to her equitable separate estate, she may use the same in trade, and the profits of such trade are equitable separate property likewise. Johnson v. Gallagher, 3 DeGex, F. & J., 494, 509; Jarman v. Wooloton, 3 Term, 618, 622; Conklin v. Doul, 67 Ill., 355, 357; Jenkins v. Flinn, 37 Ind., 349, 352; Stevens v. Reed, 112 Mass., 515; Penn v. Whitehead, 17 Gratt., 503, 512, 513; Partridge v. Stocker, 36 Vt., 108, 115; Carey v. Burruss, 20 W. Va., 571, 579; Todd v. Lee, 16 Wis., 480, 483; but in such trade she has no personal capacities. Conklin v. Doul, 67 Ill., 355, 357; Tuttle v. Hoag, 46 Mo., 38, 41; cases last cited. Equity recognizes her separate existence only with respect to her separate property, and her contracts, made in the course of her trade, can be collected only if they have been properly charged on said property. See Todd v. Lee, 16 Wis., 480, 483. In those States where she has, as to her equitable separate property, only the powers expressly given her, she can, of course, exercise only such powers.

Sec. 5. *Capacity to Trade with Consent of Husband.*—A husband cannot, by his consent, change the personal status of his wife (Stewart Mar. & Div., sec. 181), or enable her to trade with the capacities, rights and liabilities of a *feme sole* (Uhrig v. Horstman, 8 Bush, 172, 177); but he may allow her, as his agent, to engage in business and to retain the profits (Ashworth v. Outram, L. R., 5 Ch. Div., 923, 931); or he may agree, before or after marriage, that she keep her earnings or carry on business for her own use (Penn v. Whitehead, 17 Gratt., 503, 512); and he may give her, if he chooses, the necessary capital to start with; Lockwood v. Collin, 4 Robt., 129, 136. Any such gift of earnings, profits or property, is good, at least in equity, against himself (see Jarman v. Wooloton, 3 Term, 618, 622; Ashworth v. Outram, L. R., 5 Ch. Div., 923, 931; Oglesby v. Hall, 30 Ga., 386, 390; Jenkins v. Flinn, 37 Ind., 349, 352; Conklin v. Doul, 67 Ill., 355, 357; Fish v. Cushman, 6,

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Cush., 20, 29; Cropsey v. McKinney, 30 Barb., 47, 57; Sammis v. McLaughlin, 35 N. Y., 647, 650; Penn v. Whitehead, 17 Gratt., 503, 512; Richardson v. Merrill, 32 Vt., 27, 36; Carey v. Burruss, 20 W. Va., 571, 579; Stimson v. White, 20 Wis., 562, 563); and his heirs, voluntary assigns, etc. (Richardson v. Merrill, 32 Vt., 27, 36); but not against his creditors (Uhrig v. Horstman, 8 Bush, 172, 176; Cropsey v. McKinney, 30 Barb., 47, 57; McKinnon v. McDonald, 4 Jones Eq., 1, 6), unless on valuable consideration; Penn v. White head, 17 Gratt., 503, 512. When a wife thus trades under a settlement from or agreement with her husband, she takes in equity as with equitable separate property (Penn v. Whitehead, 17 Gratt., 503, 513); at law the business, profits, etc., are absolutely the husband's; Stimson v. White, 20 Wis., 562, 563. If the husband's consent to his wife's trading is by mere oral assent and without consideration, though he cannot ask back profits already made and collected by her (see Green v. Pallas, 12 N. J. Eq., 267, 268; Partridge v. Stocker, 36 Vt., 108, 114), he can revoke his consent and claim the business as his own; Conklin v. Doul, 67 Ill., 355; Stimson v. White, 20 Wis., 562, 563. If she carries on her business independently of her husband with equitable separate property, though by his consent, provided that he takes no part therein and gives the world no right to trust his credit (see Wortman v. Price, 47 Ill., 22, 24; Shackleford v. Collier, 6 Bush, 149, 159; Alt. v. Lafayette, 9 Mo. App., 91; Pawley v. Vogel, 42 Mo., 291; Lyman v. Place, 26 N. J. Eq., 30; National Bank v. Sprague, 20 Id., 13, 25; Quidort v. Pergeaux, 18 Id., 472, 480; Bucher v. Ream, 68 Penn. St., 421, 426); or provided that all the credit is given to her (Jenkins v. Flinn, 37 Ind., 349, 352; Tuttle v. Hoag, 46 Mo., 38, 42; see Harvey v. Norton, 4 Jur., 42, 43; Pearson v. Darrington, 32 Ala., 227, 241, 242; Taylor v. Shelton, 30 Conn., 122, 127, 128; Morris v. Root, 65 Ga., 686, 688; Connerat v. Goldsmith, 6 Id., 14; Meiners v. Munsen, 53 Ind., 138, 142; Weisker v. Lowenthal, 31 Md., 413, 418; Powers v. Russell, 26 Mich., 179; Hill v. Goodrich, 46 N. H., 41; Wilson v. Herbert, 41 N. J. L., 454, 461; Happek v. Hartby, 7 Baxt., 411, 414; Roberts v. Kelley, 57 Vt., 97, 101), he is not liable; nor is she (Tuttle v. Hoag, 46 Mo., 38, 41; Conklin v. Doul, 67 Ill., 305, 308), though her equitable separate estate may be, if properly charged. But if she is merely doing business in her husband's place and stead with his consent, she is merely his agent and the business is his; he may claim the profits (Switzer v. Valentine, 4 Duer, 96, 99; Stimson v. White, 20 Wis., 562, 563), the business is liable to his creditors (see Patton v. Gates, 67 Ill., 164, 167; Wilson v. Loomis, 55 Id., 352, 355; Clinton v. Hummell, 25 N. J. Eq., 45, 47), and he is liable for the debts of the business; Barlow v. Bishop, 1 East, 432, 434; Godfrey v. Brooks, 5 Harr. (Del.), 396, 397; Conklin v. Doul, 67 Ill., 355, 357; Jenkins v. Flinn, 37 Ind., 349, 352; Cropsey v. McKinney, 30 Barb., 47, 57; Barton v. Beer, 35 Id., 78, 79; Switzer v. Valentine, 4 Duer, 96, 99; Swasey v. Antram, 24 Ohio St., 87, 95; Jacobs v. Featherstone, 6 W. & S., 347, 329; Partridge v. Stocker, 36 Vt., 108, 114. Whether the business is really his or hers is a question of fact; Jarman v. Wooloton, 3 Term, 618, 622; Glover v. Alcott, 11 Mich., 471, 479; Abbey v. Deyo, 44 N. Y., 343; Partridge v. Stocker, 36 Vt., 108, 113. What has been said under this section applies only where no statute has changed the common law as to married women's disabilities. Under the statutes, generally, the husband's consent is not necessary to enable a wife to trade, nor does his mere consent involve him in the liabilities of the business.

Sec. 6. *Capacity under Separate Property Acts.*—As a general rule, statutes which secure to married women the separate enjoyment of their *property*, do not change their *personal* status (see Md. Law Record, March 1, 1884)—a rule analogous to the rule in equity, that equity recognizes married women's separate existence only in connection with their separate property. These acts do not by implication destroy the husband's common law right to his wife's earnings (Seitz v. Mitchell, 94 U. S., 580, 584; McLemore v. Pinkston, 31 Ala., 267, 270; Bear v. Hays, 36 Ill., 280, 281; Connor v. Berry, 46 Id., 370, 372; McMurtry v. Webster, 48 Id., 123, 124; Marshall v. Duke, 51 Ind., 62; Duncan v. Roselle, 15 Iowa, 501, 503; Merrill v. Smith, 37 Me., 394, 396; Glover v. Alcott, 11 Mich., 470, 482; Apple v. Ganong, 47 Miss., 197, 199; Hoyt v. White, 46 N. H., 45, 47; Quidort v. Pergeaux, 18 N. J. Eq., 472, 480; Rider v. Hulse, 33 Barb., 264, 270; Syme v. Riddle, 88 N. C., 463, 465; Raybold v. Raybold, 20 Penn. St., 308, 311); but they do usually, expressly or by implication, secure to the wife the natural increase of her property (Stout v. Perry, 70 Ind., 501, 504); and since such increase is hers, though largely the result of her husband's efforts (Aldridge v. Muirhead, 101 U. S., 397, 399), there seems to be no reason why her own services to it, though these belonged to her husband, should injuriously affect her rights. See Mitchell v. Sawyer, 21 Iowa, 582, 583. When a married

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woman has, as above suggested, no powers by statute unconnected with her statutory separate property, her dealings with such property in the way of trade must be subject to limitations of the same character as those which control her trading with her equitable separate estate. See O'Daily v. Morris, 31 Ind., 111, 112; Todd v. Lee, 16 Wis., 480, 483. She cannot, for example, trade under such a statute on her personal credit. Glover v. Alcott, 11 Mich., 470, 480, 485; Robinson v. Wallace, 39 Penn. St., 133. Her power to manage her separate estate and her power to trade are quite distinct. Wheeler v. Raymond, 130 Mass., 247, 248; Nash v. Mitchell, 71 N. Y., 199, 203. A contract for furniture to be used in a boarding house which is her separate property (Tillman v. Shackleton, 15 Mich., 447, 454; Chapman v. Briggs, 11 Allen, 547), or for horses for her livery stable (Manderback v. Mock, 29 Penn. St., 43, 47), may be invalid as contracts of a trader, but valid as contracts with relation to her separate property.

Sec. 7. *Capacity under other Statutes.*—A statute securing to a married woman her earnings or the products of her skill and industry, by implication enables her to earn money and to trade (see Haight v. McVeagh, 69 Ill., 624, 628; Adams v. Honness, 62 Barb., 326, 336; Krouskop v. Shontz, 51 Wis., 204, 215; Dayton v. Walsh, 47 Id., 113, 120; Bovard v. Kettering, 5 Out., 181), just as statutes securing to married women property acquired by purchase enable them to purchase on credit (Tiemeyer v. Turnquist, 85 N. Y., 516, 521; 39 Am. Rep., 674); thus alone are such statutes given a reasonable meaning. A statute enabling married women to trade, unless it contains restricting provisions (see Bradstreet v. Baer, 41 Md., 19, 23), enables them to trade just as if they were sole (Bodine v. Killeen, 53 N. Y., 93, 96)—to use any of the usual means of trade (Guttman v. Scannell, 7 Cal., 458, 459), and to engage in any legitimate calling. Haight v. McVeagh, 69 Ill., 624, 828. In some States the statutes require married women traders to secure a special license, or file among the records a special declaration, or obtain a decree of court, before they can engage in trade (see Adams v. Knowlton, 22 Cal., 283; Reading v. Mullen, 31 Id., 104, 106; Martinez v. Ward, 19 Fla., 176; Franklin, 79 Ky., 497, 498; Moran v. Moran, 12 Bush, 303; Uhrig v. Horstman, 8 Id., 172, 177; Wheeler v. Raymond, 130 Mass., 247, 248; Snow v. Sheldon, 126 Id., 332, 334; Youngworth v. Jewell, 15 Nev., 45, 47; King v. Thompson, 87 Penn. St., 365, 368; Elsey v. McDaniel, 95 Id., 472, 474; Orrell v. Van Gorder, 96 Id., 180, 181); but it seems that she cannot plead her failure to conform with such requirements, as they are simply for the benefit of the husband's creditors. Porter v. Gamba, 43 Cal., 105, 109. See Youngworth v. Jewell, 15 Nev., 45, 47. Since her personal incapacity to contract is the main cause of a married woman's inability to trade at common law, all statutes enabling her to contract indirectly enable her to trade.

Adams vs. Coleridge

This case came before the Court of Appeal (Brett, M. R. and Lindley and Bowen, L. JJ.) on Tuesday, when—

The attorney general (Mr. Adams being also present) addressed their lordships, asking leave to make a short statement as to the case. The court, he said, upon an application made to it, had intimated that it would not deliver judgment until an application should be made to it on behalf of either of the parties, and his application to the court now was, with the assent of Mr. Adams, that the judgment should not be given, but that the case should be removed from the paper in consequence of its not being now necessary that judgment should be delivered. As the case had been the subject of public discussion, he hoped he might be allowed to mention the terms of settlement which had been arrived at, and he desired to mention that this action was so closely connected with another action, that the settlement of one must involve also the termination of the other. He wished, he said, to make no comment, but only to read the terms which had been agreed upon. The attorney general then proceeded to read the terms from a written paper as follows:

"Adams v. The Hon. B. Coleridge.—No judgment to be delivered, and action stayed.

"Adams v. Lord Coleridge.—Action to be stayed.

"In relation to the cause of action in both actions, it should be left to (some person of eminence to be agreed upon) to determine whether compensation and of what amount should be paid to Mr. Adams.

"In addition to the above settlement, Mr. B. Coleridge, while unreservedly withdrawing the charges made in his letter of 11th December, 1883, states most positively that they were made on his part in perfect good faith on statements made to him, and Mr. Adams is happy frankly to accept such assurance.

"Lord Coleridge desires, and has long desired to say, that whatever construction may have been placed upon anything he has written or said, he thinks it due to Mr. Adams to withdraw any language which might be con-

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strued as casting imputations upon his character or motives.

"Lord Coleridge cannot regard it as being necessary to say that he has never intended to cast any reflection upon the conduct of his daughter.

"It has been agreed that Miss Coleridge shall be replaced in the same pecuniary position as she would have been in if these misunderstandings had not arisen, Lord Coleridge being perfectly willing to make the suitable provision of £600 per annum by way of allowance to Miss Coleridge."

This having been read—

Mr. Adams arose and said: I only desire to state that I have informed the attorney general that I wish to bring all litigation to an end, and that I have no thought of bringing any further actions in connection with these matters. I have only to add that I am extremely obliged to the attorney general for the kindness he has shown and the trouble he has taken in bringing these differences to so satisfactory a termination.

Brett, M. R., bowed his assent, and so the matter ended.—*The London Law Times.*

NOTES OF RECENT DECISIONS.

Mortgage: Redemption; Accounting; Improvements.—The mortgagor on redeeming the property, in the absence of any contract, express and implied, is chargeable only with those reasonable improvements which are lasting and beneficial to his estate. [Merriam v. Goss; Sup. Judicial Court of Mass., March, 1885.]

Life Insurance.

A policy of life insurance provided that in case the insured should die by his own hand, the policy should be void, except that in case he should die by his own hand while insane, the amount to be paid by the company should be the sum of the premiums actually paid thereon, with interest.

Held, that it was competent for the company to thus contract, and thus to limit the extent of its liability upon the happening of the contingency named.

Held, also, that there was no repugnancy between the different clauses in the policy declaratory of liability, and upon it being made to appear that the insured committed suicide when insane, the company was only liable for the amount of the premiums paid by the insured, with interest.

It was stipulated in a certain other policy of life insurance that in case the insured should die by his own hand the policy should be void, but if the insured at the time of taking his life was insane, the company would pay the sum insured, or refund the premiums actually received with interest, according to its judgment of the equities of the case, which option was declared to be distinctly reserved by the company, and made part of the contract.

Held, that it was competent for the parties so to contract, and that the stipulation was valid.

Held, also, that the right of the company to exercise the option reserved in the policy could not be waived until it should be shown that the insured, at the time of taking his life was insane, and that the company was not required to elect which sum it would pay, with. in the time named in the policy for payment, which was sixty days after notice and proof of death, regardless of the actual time when it was shown that the insured was insane when he committed the act of self-destruction.

Conceding that it was the duty of the company to give to the plaintiff notice of its election within a reasonable time after notice and proof of death, *Held*, that notice of such election given within little more than three months after notice and proof of death, and before suit commenced, was sufficient; that the option reserved was duly exercised, and that the company was liable only for the amount of the premiums paid on the policy with interest. [Salentine v. Mutual Benefif Life Ins. Co; U. S. Circurt Court E. D. ot Wisconsin.]

Wagering Contract; Assignment.—A son-in-law has no such pecuniary interest in the life of his mother-in-law as to permit him to effect a valid insurance thereon for his benefit. When such a policy is taken out in the name of the son-in-law, who paid the assessments thereon, and atterwards the same is assigned by him, and the assignee recovers the amount of the insurance, the administrator of the person on whose life the policy was effected may recover the amount thereof from such assignee. [Stoner v. Line, Adm'r; Sup. Court of Penn., May, 1885.]

Wagering Contract; Assignment.—The assignment of a policy of life insurance, though made in good faith, to a person who has no insurable interest in the life of the assured, is a wagering contract and contrary to the policy of the law.

When in such case, on the death of the assured, the assignee recovers the amount of the policy, the personal representatives of the deceased may recover from said assignee the amount received by him, less the sum he has paid for the policy, with interest and the ag-

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gregate of the assessments paid on the policy by him. [Downey v. Hoffer; Sup. Court of Penn., May, 1885.]

Assignment; Gambling.—When a husband, who is named as a beneficiary upon a policy of insurance on his wife's life assigns the same to a purchaser for speculative purposes only, and such assignee receives the amount of the policy upon the death of the insured, the husband is entitled to recover from him such amount less the sum paid by him for assessments and annual dues on the policy. [Wegman v. Smith; Sup. Court of Penn., May, 1884.]

Position of Beneficiary in Gambling Policy.—In a suit against a beneficiary in an insurance policy by the administrators of the insured, evidence of the gambling nature of the transaction will not be allowed in defence. [Kohr v. Wolf; Sup. Court of Penn., May 1885.]

The Courts.

SUPREME COURT OF THE DISTRICT OF COLUMBIA

GENERAL TERM.

July 6, 1885.

Schillinger and Charles Creecy, administrators, and others v. Henry L. Cranford and District of Columbia. Decision below reversed.

Collins v. Johnson. Wednesday next fixed for hearing.

July 7, 1885.

Schillinger v. Cranford and District of Columbia. Bill dismissed with costs.

July 8, 1885.

Almond v. Latney. Opinion by Justice James. Decree below affirmed.

Washington Market Co. v. Beckley, administrator of Jones. Exception to account of administrator allowing claim of the company for eighty odd dollars.

Ourand v. Olmstead. Opinion by Justice Merrick dismissing bill of interpleader, and affirming decree of the court below to that extent with costs.

Quill v. Wolf et al. Bill to vacate decree as fraudulent. Opinion by Justice Merrick reversing decree below which vacated the deed.

Diggins v. Doherty. Opinion by Justice James, reversing decree below, conveyance set aside, and plaintiff given costs.

Keyser v. Hitz et al. Exception to auditor's report in distribution of funds by Keyser as receiver. Opinion by Justice Merrick, remanding the case to the auditor for the purpose of allowing the holders of the deed of trust to receive the rents and profits from the property which have occurred since the receiver has been appointed by the court less the taxes and arrears which are to be paid.

Adjourned to Monday July 13.

IN EQUITY.—New Suits.

July 7, 1885.

9524. ———

July 9, 1885.

9525. John Ebert v. Elizabeth Ebert. For divorce. Com sol, C. Carrington.

9526. Frances Meredith v. John Meredith. For divorce. Com sol, J. McD. Carrington.

July 10, 1885.

9527. Samuel S. Smoot v. John H. C. Coffin et al. Specific performance. Com sols, Hazleton & Payne and A. J. Willard.

9528. George Truesdell v. Rebecca Payne et al. Judg't, creditor's bill. Com sols, Edwards & Barnard.

CIRCUIT COURT.—New Suits at Law.

July 6, 1885.

26270. Heywood Bros. v. Mahlon H. Howard, Note, $101.65. Pliffs attys, Appleby & Edmonston.

26271. Gustav Kahlert v. Nathan H. Devers. Certiorari. Defts attys, Nauck and Stone.

July 7, 1885.

26272. James W. Shea v. Frederick B. Lilley et al. Note, $600. Pliffs atty, H. W. Garnett.

26273. Harry J Daly v. Catharine P. Dodson. Ejectment lot 51 sq. 545. Pliffs atty, B F. Leighton.

July 8, 1885

26274. Nathan B. Clarke v. The New England Mutual Life Ins. Co. Appeal. Pliffs attys, Hine & Thomas.

26275. Philip Mansfield v. Richard B. Smith. Replevin Pliffs attys, Carrington and Moss.

July 9, 1887.

26276. Sallie L. Gamble v. Samuel T. Luckett. Replevin. Pliffs atty, A. B. Williams.

26277. Russel & Armstrong v. Wm. H, Hale. Note, $278.52. Pliffs attys, Birney & Birvey.

26278. The Brunswick Baeke Collender Co. v. John H. Hains. Notes, $300 Pliffs attys, Newton & Berryman

26279. Wm Muehleisen v. John J. Unsworth et al. Note, $100. Pliffs attys, Same.

26280. Wm, H. Evans v. Martin C. Flannery. Acct., $187 60. Pliffs atty, F. W Jones.

26281. Same v. Adolph H Jouvenal. Acct, $139.42 Pliffs atty. Same.

July 10, 1885.

26282. Ambrose Hoener v. The W. & G. R. R. Co. Damages, $20,000 Pliffs attys, Smith and Hill.

26283 Joseph R Hertford v John A. Hicks et al. Judg't of Justice Helmick, $76 10. Pliffs atty, J. J. Wilmarth.

26284. Same v. Ronert Dorsey et al. Judg't of Justice Helmick; $55 96. Pliffs atty, Same.

PROBATE COURT.—Justice Hagner.

July 10, 1885

Estate of Samuel (Samuel H.) Hill. Inventory returned.

Estate of John Alexander. Will admitted to probate and letters granted to Sarah E. Blundon.

Estate of C S. Boorman. Mary Boorman required to give new bond in thirty days.

Estate of Joseph W McCorkle. Time for taking testimony extended thirty days.

Estate of Howard Johnson. H. A. Johnson appointed administrator. Bond, $200.

Estate of Susan B, Porter. John W. Ross appointed administrator. Bond, $2,000.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, sitting in Equity. July 6, 1885.

SAMUEL A. PEUGH, Complainant, against HENRY S. DAVIS, Defendant. } 1713. Eq. Doc. 9.

Henry E. Davis, the trustee herein appointed by the Court in the above entitled cause to make sale of squares numbered 910 and 911 in the City of Washington and District of Columbia, having reported sales by him of the said premises as follows, to wit: Lots 2 and 3, square 910, to Oella Chappel, for $884 17; lots 1 and 3, square 911, to Thomas Potee, for $4360.50; and lots 1, square 910, and 2, 4, 5, 6, 7, 8, 9 and 10, square 911, to Henry S. Davis, for $5416 90—the aggregate amount of said sales being $10,661.57;

It is, this 6th day of July, A. D. 1885, ordered that the said sales be ratified and confirmed, unless cause to the contrary be shown on or before the 6th day of August, A. D. 1885.

Provided, a copy of this order be published once a week for three successive weeks, in the Washington Law Reporter before the said 6th day of August, A. D. 1885

A. B. HAGNER.

A true copy. Test: 28 R. J MEIGS, Clerk.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of John R. Cathin, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of June, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of June. 1885.

CARRIE H. CATHIN.

JOSEPH J. DARLINGTON, Solicitor. 28 Executrix.

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Legal Notices.

THIS IS TO GIVE NOTICE.
That the subscribers, of the District of Columbia have obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration, c. t. a., on the personal estate of Gurden Snowden, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscribers on or before the 30th day of June next; they may otherwise by law be excluded from all benefit of the said estate,
Given under our hands this 30th day of June, 1885.
JAMES H. SMITH,
WILLIAM B. WEBB,
28 Administrators c. ta. a.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c.t.a. on the personal estate of John E. Thompson, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 3rd day of July next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 3d day of July, 1885
MARY E. THOMPSON,
28 Administratrix c. t. a.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Sarah E. Wilson, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of July next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 6th day of July, 1885.
THEODORE D. WILSON,
D. J. PARTELLO, Solicitor. 28 Executor.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Samuel, alias Samuel H., Hill, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of July next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 6th day of July, 1885.
GEORGE E. JOHNSON,
28 Executor.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of James S. Magee, late of the District of Columbia, deceased.
All persons having claims again the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 26th day of June next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 26th day of June, 1885.
28 SUSAN ST. C. MAGEE,
N. CARUSI, Solicitor. Administratrix

THIS IS TO GIVE NOTICE.
That the subscribers, of the District of Columbia, and Princeton, N. J., respectively, have obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testrmentary on the personal estate of William McLean, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscribers on or before the 6th day of July next; they may otherwise by law be excluded from all benefit of the said estate.
Given under our hands this 6th day of July, 1885.
SAM'L S. SHEDD,
WILLIAM H. ROBERTS.
JAS. G. PAYNE, Solicitor. 28

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 10th, 1885.
In the matter of the Probate of the Will of Ira Croson, late of the District of Columbia, deceased.
Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by Charles Allen and Henry L. Rose
All persons interested are hereby notified to appear in this court on Friday, the 31st day of July, next, at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day
By the Court. A. B. HAGNER, Justice.
Test: 28 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business. July 10th, 1885.
In the case of Woodbury Blair, Administrator of Robert E. Boston, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 31st day of July, A. D. 1885, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
Test: 25 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 8th day of July, 1885.
SIDNEY A. GILBERY
v.
JOHN F. GILBERY. } No. 9617. Eq. Doc. 25
Bill for Divorce for desertion.
On motion of the plaintiff, by Messrs. A. B. Webb and G. A. Kuhn, her solicitors, it is ordered that the defendant, John F. Gilbery, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.
By the Court. A. B. HAGNER, Justice.
True copy. Test: 28* R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 8th day of July, 1885.
WILLIAM E. TAYLOR
v.
AGNES E. TAYLOR. } No. 9459. Eq Doc 24
Bill for Divorce upon the ground of desertion.
On motion of the complainant, by Mr E. A. Newman, his solicitor, it is ordered that the defendant, Agnes E Taylor, cause her appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.
By the Court. A. B. HAGNER, Justice.
True copy. Test: 28 R. J MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 8th day of July, 1885.
CHARLES A. ELDREDGE
v.
ELIJAH K. BRUCE. } No. 26,265. Law.
On motion of the plaintiff, by Mr. R B Lewis, his attorney, it is ordered that the defendant, Elijah K. Bruce, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.
By the Court. W. S COX, Justice
True copy. Test: 28 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Anna Pinion, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of July next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 10th day of July, 1885.
JOHN H. KING,
RUTLEDGE WILLSON, Solicitor. 28 Executor.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of John Alexander Blundon, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of July, 1885.

SARAH ELLEN BLUNDEN,

J. B. THOMPSON, Solicitor. 28 Executrix.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. The 10th day of July, 1885.

GEORGE CALLAGHAN v. MARY J. O'FLANNIGAN et al } 9243. Eq. Doc. 24.

On hearing the report of James Fullerton, trustee, it is, this 10th day of July, A. D. 1885, ordered that the sale reported by said trustee, and the expenses thereof, be confirmed and allowed, without reference to the Auditor, unless cause to the contrary be shown to this Court on or before the 10th day of August next.

Provided, that a copy of this order be published in the Washington Law Reporter once a week for three weeks before said 10th day of August, 1885.

The report states the amount of sale and interest on deferred payments to be $2141.20.

A. B. HAGNER.

A true copy. Test: 26 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 22d day of June, 1885.

ELIZA B. CAUSTEN v. JAMES H. C. YOUNG et al. } No. 9469 Eq. Doc. 24.

On motion of the plaintiff, by Messrs. James H. Taylor and George O. Payne, her solicitors, it is ordered that the defendants. James H. C. Young, Josephine de Carvallo, Manuel Carvallo, Victor Carvallo, Henrietta J. de Bueneventi, Marino Bueneventi, Robert Shriver, Henry Shriver, Eliza Fundenburg, Stanley Fundenburg, Mary C. Swartzwalder, Henry Swartzwalder, Henrietta Shriver, Henry Johnson, Robert Shriver, administrator, Sarah Cresap, administratrix, cause their appearance to be entered herein on orbefore the first rule-day occuring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court W. S. COX, Justice.

A true copy 26 Test: R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

GEORGE T. JACOBS, Complainant, v. JOHN W. POST et al., Defendants, } In Equity. No. 9235.

Upon consideration of the report of the trustee. Daniel O'O Callaghan, and this this day filed, it is, this 26th day of June, A. D 1885, ordered that the sale of the Capital Stock of The Post Combination Sewing Machine Company, owned by the defendant, be, and the same shall stand finally ratified and confirmed, unless good cause to the contrary be shown on or before Saturday, the 18th day of July next.

Provided a copy hereof be published once a week for three weeks prior to said date in the Law Reporter.

The report states that the stock was bid off at $23 per share to George T. Jacobs.

W. S. COX, Justice.

A true copy. 26 Test: R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 3d, 1885.

In the matter of the Estate of Robert M. Reynolds, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by Orpha W. Reynolds.

All persons interested are hereby notified to appear in this Court on Friday, the 24th day of July next, at 11 o'clock, a m, to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice

Test: 27 H. J. RAMSDELL, Register of Wills.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Wilhelm Bandel, late of Bregenz, Austria, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 3d day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 3d day of July, 1885.

JAMES L. NORRIS,

JNO. E. NORRIS, Solicitor. 28 Administrator.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of John R. Cathin, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of June, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of June. 1885.

CARRIE H. CATHIN.

JOSEPH J. DARLINGTON Solicitor. 28 Executrix.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

MARY B. MOSHER et al. v. THEODORE MOSHER et al. } In Equity. No. 8911.

The trustees in the above-entitled cause having made and filed their report of sales of the real estate in the said cause, it is, this 24th day of June, A. D. 1885, ordered, adjudged and decreed, that said sales of the said real estate and said trustees' report be, and the same are hereby ratified and confirmed, unless cause to the contrary thereof be shown on or before the 27th day of July, A D. 1885.

Provided a copy of this order be published in "The Evening Star," and the "Washington Law Reporter," two papers published in the city of Washington, District of Columbia, once in each of three successive weeks before the 27th day of July, A. D. 1885.

The report shows the amount of sales to be $24,865.12.

By the Court. W. S. COX, Justice.

A true Copy. Test: 26 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Sitting in Equity, June 26, 1885.

MARY T. DAYTON et al. v. CORNELIA H. DAYTON et al. } 7801. Eq. Doc. 21

It appearing to the Court that, in the order passed in this cause on the 18th day of June, 1885, the name of John Miller was, inadvertently and through a clerical error, inserted as the purchaser of lot numbered 22, in square numbered 512, instead of that of Albert F. Fox, who was the real purchaser thereof, it is, by the Court, this 26th day of June, 1885, ordered, that said order be stricken out and annulled.

And in is further ordered that the sale of said lot to said Albert F. Fox be confirmed, in accordance with the written offer of said Fox annexed to the report of James M. Johnston, trustee, which was filed herein on June 17th, 1885

Provided the usual publication be made requiring cause to be shown against the ratification of said lot.

W. S. COX, Justice.

A true copy. 26 test: R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business. June 26th, 1885.

In the case of Joseph J. Waters, Administrator of Henry Douglas, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 17th day of July A. D. 1885, at 11 o'clock, a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 26 H. J. RAMSDELL, Register of Wills.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Holding a Special Term for Orphans' Court Business. June 30th, 1885

In the case of Andrew B. Graham, Adm'r c. t. a. of Thomas Evans, deceased, the Adm'r c. t. a. aforesaid has, with the approval of the Court appointed Friday, the 24th day of July, A. D 1885, at 11 o'clock, a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Adm'r c t. a will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 27 H. J RAMSDELL, Register of Wills.
F. E. ALEXANDER, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 3d, 1885.

In the matter of the Estate of Charles Clark, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Caroline Case, who prays that letters of administration may be granted to John J. Wilmarth.

All persons interested are hereby notified to appear in this court on Friday the 24th day of July next at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 27 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

THEO. A. MILLS and others
v.
SUSAN E. MILLS and others. } No. 9042. Eq. Doc. 24.

It is, this 30th day of June, 1885, ordered, that the sales made and reported by T. A. Lambert, C. C. Cole and S. T. Thomas, trustees for the sale of the real estate of Clark Mills, deceased. being sales of lots numbered from one to twelve, both inclusive, of the second subdivision of said real estate made by said trustees, and being the whole of the real estate directed to be sold in this cause, be ratified and confirmed, unless cause to the contrary thereof be shown on or before the 30th day of July, 1885.

Provided, a copy of this order be published in the Washington Law Reporter once in each week for three successive weeks before said date.

The aggregate of said sales, as stated in said report, is $12,940 00.

W. S. COX, Justice.
A true copy. Test: 27 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Mary Buckley, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 29th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of June, 1885.

27 PHEBE E LIVERMORE,
FRANKLIN H. MACKEY, Solicitor. Administratrix.

THIS IS TO GIVE NOTICE,

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Sarah Otterback, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of June, 1885.

HENRY B. OTTERBACK,
W. WILLOUGHBY, Solicitor. 27 Administrator.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

THOMAS J. FISHER
v.
J. R. TUCKER et al.
heirs of
T. T. TUCKER. } Equity. No. 9305. Doc. 24.

ORDER OF PUBLICATION.

The object of the above entitled bill is to quiet the title of Thomas J. Fisher to sub lots 17, 18, 19, 23, 24, and 27 to 45, both inclusive, in square 151, in the city of Washington, District of Columbia, as against the defendants hereinafter named and John R. Tucker, M. C., Beverley Tucker, Laura Tucker and Jane S. Tucker, also defendants herein (who have been served in this cause in person), said defendants being averred by the bill to be all of the heirs of Thomas Tudor Tucker and non-residents of the District of Columbia. Plaintiff herein claims title to the before described property under color of title of tax-deed made in 1840, and by virtue of quiet, peaceable, open, notorious, and continuous adverse possession in himself and his predecessors in title for more than twenty years; and in appearing to the court that Fannie Bland Graham, J. R. Graham, Mary Tucker Magill, Evelina Powell, W. L. Powell, Virginia Edwards, John E. Edwards, Elizabeth Dallas Tucker, Virginia B. Tucker, Dallas Tucker, Hattie A. Tucker, Cassie D. Brown, John T. Brown, John Randolph Tucker, Emma B. Tucker, Evelina T. Lucas, D. B. Lucas Nannie S. McLaughlin, St. George T. Brooke, I. Fairfax McLaughlin, Mary B. Brooke, Frank J. Brooke, Gay Bentley Brooke, D. Tucker Brooke, Lucy Higgins Brooke, Henry L. Brooke, Elizabeth D. Brooke, Laura Beverley Bedinger, Everett W. Bedinger Elizabeth Gilmer Tucker, Walker Gilmer Tucker, Lizzie Edwards Tucker, Evelina Tucker, Lucy Richardson, Robert B. Richardson. Annie Tyler, Lyon G. Tyler, Eliza Taylor Tucker, Alfred B. Tucker, H. Tudor Tucker, Cynthia B. T. Coleman, Charles W. Coleman. B. St. George Tucker, Eliza C. Tucker, Fanny B. B. T. Taliaferro, Julia Clark Tucker, Nathaniel Beverley Tucker, William Francis Peyton Tucker, Ada B. Lewis Tucker, Virginia Tucker, Virginia Lewis Tucker, Francis M. Tucker, Mary Thornton Tucker, Nathaniel Beverley Tucker, John R. Bryan, Delia Page, John R. Page, Fanny Carmichael, S. W. Carmichael Georgia B. Grinnan, A. G. Grinnan, John R. Bryan, jr., Margaret R. Bryan, St. George T. C. Bryan, Joseph Bryan, Isabel S. Bryan, C. B. Bryan, Mary S. C. Bryan, Fanny Bland Brown, H. Peronneau Brown, Virginia C. Braxton and St. George T. Coalter are non-residents; it is, therefore, this 15th day of June, A.D. 1885,

Ordered and adjudged, That the complainant, by causing a copy of this order to be inserted in the Evening Star a newspaper published at Washington, D. C., once in each of three successive weeks before the 17th day of September, A. D. 1885, give notice to the said absent defendants of the object and substance of this bill, and warn them to appear in this court in person or by solicitor on or before the 17th day of September next, to answer the premises and show cause, if any they have, why a decree ought not to be passed as prayed.

A. B. HAGNER.
HILLYER & RALSTON, Plaintiff's Solicitors.
A true copy—test: 25 R. J. MEIGS, Clerk.
By M. A. CLANCY, Assistant Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 2d day of July, 1885.

MARY E GLANCY
v.
PATRICK GLANCY. } No. 9365. Equity.

On motion of the complainant, by Mr. Oscar Nauck, her solicitor, it is ordered that the defendant, Patrick Glancy, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. W S. COX, Justice.
A true copy. Test: 27 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Elizabeth A. Pumphrey, late of the District of Columbia deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of June, 1885

CHASTAIN C. MEADOR,
JOSEPH J. DARLINGTON, Solicitor. 25 Executor.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 20th day of May, 1885.

IDA MAY STANSBURY et al. v. FRANK INGLEHART et al. } No. 7781. Eq. Doc. 21.

On motion of the plaintiffs, by Mr. J. J. Darlington, their solicitor, it is ordered that the defendant, Annie H Goell, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B HAGNER, Justice
A true copy. Test: 24 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 8th day of June, 1885.

PAULINE M. POWELL v. WILLIAM POWELL. } No 9332.

On motion of the plaintiff, by Mr. William A. Cook, her solicitor, it is ordered that the defendant, William Powell, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B HAGNER, Justice.
True copy. Test: 24 R. J. MEIGS, Clerk

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 10th day of June, 1885

MIRANDA C. DUNNINGTON v. WALTER W. DUNNINGTON. } No. 9428.

On motion of the plaintiff, by William A. Cook, her solicitor, it is ordered that the defendant, Walter W. Dunnington, cause his appearance to be entered herein on or before the first rule-day, occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B HAGNER, Justice.
True Copy Test: 24 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 10th day of June, 1885

JOHN HENRY SMITH v. RICHARD SMITH et al. } No. 9455. In Equity.

On motion of the plaintiff, by Mr. Eugene F. Arnold, his solicitor, is it ordered that the defendants, Eliza Smith, Betsey Smith, Charles Smith and Christian Smith, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 24 R. J. MEIGS. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. June 13th, 1885.

In the case of Daniel Sutter, Administrator of Benjamin P. Sutter, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 17th day of July, A. D. 1885, at 10 o'clock a. m, for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the said Adm'r will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 24 H. J. RAMSDELL, Register of Wills.
JAMES H. SAVILLE, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

CHARLES A. BEST v. PETER BEST et al. } 8375. Eq. Doc. 22.

The trustee in the above entitled cause having reported to the Court that he has made sale of lot No. 4 in square No. 864, to Benjamin F. Ferguson and Patrick Bryan, at 25 cents a square foot, it is, this 12th day of June, 1885, ordered, adjudged and decreed that the said sale be, and it is, hereby ratified and confirmed unless cause to the contrary be shown on or before the 12th day of July, 1885. Provided, a copy of this order be inserted in the Washington Law Reporter once a week for three successive weeks before the 12th day of July, 1885.

A B HAGNER.
A true copy. 24 Test: R. J. MEIGS, Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 27th day of June, 1885.

FRANKLIN SCHOYER v. CORA SCHOYER. } No. . Equity Docket.

On motion of the plaintiff, by Mr. H. T. Taggart, his solicitor, it is ordered that the defendant, Cora Schoyer, cause her appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.
True copy. Test: 26 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Samuel S. A. H. Marks, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 26th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 26th day of June, 1885.

ARKANSAS G. MARKS,
26 LEONORA MARKS,
HENRY WISE GARNETT, Solicitor. Administratrices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Mary H. Dorsey, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 26th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of June, 1885.

WORTHINGTON DORSEY,
WM. F. MATTINGLY, Solicitor. 26 Executor.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Angelica Simpson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of June, 1885.

MARGARET K. SIMPSON,
W. B. LORD, Solicitor. 26 Executrix.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Robert H. Graham, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 27th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of June, 1885.

ANN S. GRAHAM,
WM. G. HENDERSON, Solicitor. 26 Executrix.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of John Travers, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 11th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of June, 1885.

P. B. DUNN, Executor.
FILLMORE BEALL, Solicitor. 26

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

WILLIAM SHARON v. A. R. TUCKER et al. heirs of T. T. TUCKER. } Equity. No. 9304. Doc. 24.

ORDER OF PUBLICATION.

The object of the above entitled bill is to quiet the title of William Sharon to sub lots 46 to 149, both inclusive, in square 151, in the city of Washington, District of Columbia, as against the defendants hereinafter named and John R. Tucker, M. C., Beverley Tucker, Laura Tucker and Jane S. Tucker, also defendants herein (who have been served in this cause in person), said defendants being averred by the bill to be all of the heirs of Thomas Tudor Tucker and non-residents of the District of Columbia. Plaintiff herein claims title to the before described property under color of title of tax-deed made in 1840, and by virtue of quiet, peaceable, open, notorious, and continuous adverse possession in himself and his predecessors in title for more than twenty years; and in appearing to the court that Fannie Bland Graham, J. R. Graham, Mary Tucker Magill, Evelina Powell, W. L. Powell, Virginia Edwards, John E. Edwards, Elizabeth Dallas Tucker, Virginia B. Tucker, Dallas Tucker, Hattie A. Tucker, Cassie D. Brown, John T. Brown, John Randolph Tucker, Emma B. Tucker, Evelina T. Lucas, D. B. Lucas Nannie S. McLaughlin, St. George T. Brooke, I. Fairfax McLaughlin, Mary B. Brooke, Frank J. Brooke, Gay Bentley Brooke, D. Tucker Brooke, Lucy Higgins Brooke, Henry L. Brooke, Elizabeth D. Brooke, Laura Beverley Bedinger, Everett W. Bedinger, Elizabeth Gilmer Tucker, Walker Gilmer Tucker, Lizzie Edwards Tucker, Evelina Tucker, Lucy Richardson, Robert B. Richardson, Annie Tyler, Lyon G. Tyler, Eliza Taylor Tucker, Alfred B. Tucker, H. Tudor Tucker, Cynthia B. T. Coleman, Charles W. Coleman, B. St. George Tucker, Eliza C. Tucker, Fanny B. B. T. Taliaferro, Julia Clark Tucker, Nathaniel Beverley Tucker, William Francis Peyton Tucker, Ada B. Lewis Tucker, Virginia Tucker, Virginia Lewis Tucker, Francis M. Tucker, Mary Thornton Tucker, Nathaniel Beverley Tucker, John R. Bryan, Delia Page, John R. Page, Fanny Carmichael, S. W. Carmichael Georgia B. Grinnan, A. G. Grinnan, John R. Bryan, jr., Margaret R. Bryan, St. George T. C. Bryan, Joseph Bryan, Isabel S. Bryan, C. B. Bryan, Mary S. C. Bryan, Fanny Bland Brown, H. Peronneau Brown, Virginia C. Braxton and St. George T. Coalter are non-residents; it is, therefore, this 15th day of June, A.D. 1885,

Ordered and adjudged, That the complainant, by causing a copy of this order to be inserted in the Evening Star a newspaper published at Washington, D. C., once in each of three successive weeks before the 17th day of September, A. D. 1885, give notice to the said absent defendants of the object and substance of this bill, and warn them to appear in this court in person or by solicitor on or before the 17th day of September next, to answer the premises and show cause, if any they have, why a decree ought not to be passed as prayed.

A. B. HAGNER.

HILLYER & RALSTON, Plaintiff's Solicitors.

A true copy—test: 25 R. J. MEIGS, Clerk.

By M. A. CLANCY, Assistant Clerk.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Margaret Bain, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2nd day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2nd day of June, 1885

25 W. R. WOODWARD, Executor.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Ernst Loeffler, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 17th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of June, 1885.

25 CHARLES A. WALTER, Executor.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. June 26th, 1885

In the case of Annie C. Babcock, Executrix of Orville E Babcock, deceased, the Ex'x aforesaid has, with the approval of the court, appointed Friday, the 7th day of August, A. D. 1885, at 11 o'clock a m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized with their claims against the estate properly vouched; otherwise the Executrix will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test 26 H J RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 27th day of May, 1885.

WM. TAYLOR SNYDER, Trustee, v. ADELAIDE E. BAKER et al. } No. 9464. Eq. Doc 24.

On motion of the plaintiff, by Mr. Charles D. Fowler, his solicitor, it is ordered that the defendants, Adelaide E. Baker, Sarah G. Penasco de Gale, Norberta Penasco de Gale, R. Carter Wellford, B. Randolph Wellford, Armistead N. Wellford, Virginia T. Lewis, administratrix w. a., Virginia T. Lewis, Henry G. Lewis, Trapiere S. Lewis Etta T. Key, Etta T. Smith, Joseph Hall Key, Charles E. Key, Harriet H. Key and all unknown heirs of H. G. S. Key and Henrietta H., his wife, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day, otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER. Justice.

A true copy. Test: 25 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, this 24th day of June, 1885.

JAMES A. KING et al v. JOHN W. KING et al } In Equity. No. 9349.

Upon the trustee's report of the sale of part of lot 7, in square 752, in this cause mentioned, it is, this 24th June 1885, ordered, that said sale is hereby ratified and confirmed unless cause to the contrary be shown on or before 24th July, 1885.

Provided this order be published in the Washington Law Reporter once a week for three weeks before said day.

W. S. COX, Justice.

A true copy. 26 Test: R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration on the personal estate of Caesar Smith, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of June, 1885,

ANNIE B. SMITH,

CAMPBELL CARRINGTON, Solicitor 25 Administratrix.

THIS IS TO GIVE NOTICE:

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Rebecca E. Herron, late of the District of Columbia, deceased

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of June next: they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of June, 1885.

JAMES WHITLEY HERRON,

26 Administrator Star Office.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 29th day of June, 1885.

JOHN J. ALBRIGHT v. R. S. HARDESTY et al. } No 9604. Eq. Doc. 25.

On motion of the plaintiff, by Messrs. Worthington & Heald, his solicitors, it is ordered that the defendants, Hortense Hardesty, Elizabeth Hardesty and Julia Hardesty, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.

A true copy. Test: 27 R. J. MEIGS, Clerk.

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Washington Law Reporter

WASHINGTON - - - - - - - - July 18, 1885.

GEORGE B. CORKHILL - - - EDITOR

THE sensational articles in the *Pall Mall Gazette* are not likely to prove of any benefit to any one except to the proprietor of the *Gazette* on account of the increased sales of his paper. He unfortunately has the reputation of making a point for his paper by publishing articles, the public benefit of which has always been seriously questioned; but in the present case, it is due him to say that he claims to have the support and and authority of leading influential men who fully sustain his course. But still there are more evidences thus far of it being a political move than a desire for any genuine reformation of the morals of the city of London.

His continued invitation to be sued for libel amounts to nothing. The *Gazette* flourishes on libel suits. The criminal and police authorities are deserving all that can be said against them if the statements are true.

THE absurd and barbarous rule, denying a prisoner, charged with a felonious crime, the privilege of stating his case by counsel, rooted in the very outset in the system of trial by jury, continued unchanged in England, except in cases of high treason, down to the memory of men now living. There was a preposterous idea prevailing that the judge should be, as it were, counsel for the prisoner. The rule applied to all; to the ignorant, the deaf, the young. Nothing, however, could shake the rule, until it met with the terrible and scaling invectives of Sydney Smith, in the *Edinburg Review*, in 1826, where he maintained at length the proposition that a prisoner, once accused of felony, ought to have the same power of selecting counsel to speak for him as he has in cases of treason and misdemeanor, and as defendants have in all civil actions.

Counsel was allowed for the first time by 6 and 7 William IV, C. 114, 1836-7.

A KANSAS court has just decided that, where it is necessary for the maintenance of good order and discipline in a public school, the teacher has a right to inflict a reasonable corporal punishment upon a scholar.

But that, in chastising a pupil, the teacher should exercise reasonable judgment and discretion, and should be governed as to the mode and severity of the punishment by the nature of the offence committed, the previous good or bad conduct of the pupil, so far as it aggravates or mitigates the offence for which the punishment is given, the age, size, sex and apparent power of endurance of the pupil, the present apparent effect of the punishment, both upon the body and mind of the pupil, as well as any other consideration which tends to show the reasonableness or unreasonableness of the punishment under all the circumstances of the case.

Still that the mere bruising or cutting of the skin of the pupil, by the application of a rod in the hands of a teacher, cannot, as a matter of law, be said to be immoderate corporal punishment; for if such were declared to be the law, corporal punishment would lose all its beneficial effects upon a certain class of offenders, who would feel little terror of a rod which could not quell their unruly spirits by disturbing the cuticle of their legally-protected skins.

It is not probable that this decision will commend itself very largely to the legal public, at least out of Kansas.

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Supreme Court District of Columbia

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

THE FIFTH BAPTIST CHURCH OF WASHINGTON CITY, D. C., BY ITS TRUSTEES,

vs.

THE BALTIMORE & POTOMAC RAILROAD COMPANY.

LAW. No. 21,760.

Decided April 27, 1885.
The CHIEF JUSTICE and Justices WYLIE, COX and JAMES sitting.

Under section 535 of the Revised Statutes of the District of Columbia, a recorded certificate of incorporation of a religious society is not evidence of a corporate organization unless it state the date of the election or appointment of the trustees: the length of time for which the trustees were elected or appointed, and is verified by an affidavit by one of the persons making the certificate. Without these particulars it is not the paper which the law provides for as sufficient proof of corporate organization, for if a paper be placed on record which is neither directed or authorized to be recorded, the record is no evidence of the existence or contents of such original paper, and still less of any facts set forth, recited or declared in such paper.

THE CASE is stated in the opinion.

J. J. DARLINGTON and R. T. MERRICK for plaintiff.

ENOCH TOTTEN for defendant.

Mr. Justice Cox delivered the opinion of the court.

The case of the Fifth Baptist Church against the Baltimore & Potomac Railroad Company, is a second action for damages for the continuance of an alleged nuisance to the property of the plaintiff, for which a prior action was brought and a judgment recovered. The suit is brought in the name of the Fifth Baptist Church of Washington, D. C., by its trustees. The declaration commences by stating that—

"The plaintiff is a body corporate in the District of Columbia, under and by virtue of the general act of incorporation of the Congress of the United States, approved the 5th day of May, A. D. 1870."

The first plea filed in this case was:

"That the said plaintiff was not, at the time of the commencement of this suit, and never was, a body corporate or politic as set forth and alleged in and by said declaration."

When the plaintiff rested, the defendant by its counsel prayed the court to instruct the jury to render a verdict for the defendant, on the ground that the plaintiff had failed to prove that it was a corporation as alleged, and to further instruct the jury that the defendant was entitled to judgment upon the first, fourth and fifth pleas, which motion the court overruled and denied. This was the principal issue in the case, and the one which raised the only serious question of law in the case which had not been decided in the former action.

It appears by the evidence that as far back as June and July, 1863, the ground on which the Baptist Church was erected had been conveyed to certain parties as trustees of the Island Baptist Church. To sustain the affirmative of this issue on the part of the plaintiff, the following paper was offered in evidence:

"*Incorporation Charter of the Fifth Baptist Church, Washington, D. C. Recorded, September* 5, 1871, 11 *a. m.*

"We, C. C. Meador, George M. Kendall [and others whom it is unnecessary to name here] do hereby certify that we have been duly elected 'trustees of the Fifth Baptist Church, of Washington, D. C.' (commonly called 'the Island Baptist Church'); and that this certificate is made, signed and sealed for the purposes of obtaining corporate rights and privileges for the said Fifth Baptist Church, a religious society worshipping at present in their church edifice on D street south, between Four-and-a-half and Sixth streets, in said city of Washington, under the provision of an act of Congress approved May 5, 1870, entitled 'An act to provide for the creation of corporations in the District of Columbia by general law.'

"In testimony whereof, we hereunto set our hands and affixed our seals this twenty-fourth day of August, in the year of our Lord one thousand eight hundred and seventy-one."

This is signed and sealed by the parties, and acknowledged before Edmund F. Brown, a notary public, and certified to be a true and verified copy of a certificate of incorporation, and the whole of the same,

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as recorded in Liber No. 1, folio 153 *et seq.*, "Acts of Incorporation for the District of Columbia," by George F. Schayer, deputy recorder.

The defendant's counsel objected to this as evidence of incorporation under the law, upon the ground that it was not the paper that the law directs and allows to be recorded. On looking at the Revised Statutes of the District of Columbia, we find in section 535, under class 2, in regard to these societies, that:

"The persons elected or appointed as trustees shall immediately thereafter make a certificate under their hands and seals, stating the date of their election or appointment, the name of the society or congregation, and length of time for which they were elected or appointed, which shall be verified by the affidavit of one of the persons making the same, and shall be filed and recorded in the office of the recorder of deeds of the District."

This certificate does not state the date of the election or appointment of the trustees. It does not state the length of time for which the trustees were elected or appointed, and it is not verified by affidavit, but is simply acknowledged before a notary public. It does state the name of the society. So that it only complies with one out of four requisites prescribed by the law, to make it a complete and valid certificate of incorporation.

The answer made to this by the plaintiff is two-fold. First, it is claimed that the making and filing of this certificate of incorporation is not by the law made a condition precedent to the incorporation, but that the provisions of the statute in that regard are purely directory.

In looking at the law, we find that it contains provisions in reference to different classes of incorporations. For instance, boards of trade and cemetery companies are not required to file any certificate at all, but upon the mere election of trustees they are thereupon made bodies corporate. Trading and manufacturing corporations, on the other hand, are required to file a certificate; and it is provided that on the filing and recording of such certificate, they shall become a body corporate, and shall have such and such powers. In respect to religious societies it is provided that they may purchase or receive by gift a quantity of land, may assume a name, and may elect or appoint any number of trustees, not exceeding ten, who shall be styled trustees of such society or congregation. Then these trustees are directed to make and file this certificate, stating the date of their election or appointment, the name of the society or congregation, and the length of time for which they were elected or appointed. After these directions, it is said:

"Such trustees and their successors shall have perpetual succession and existence," &c.

But it is not said that upon the filing of the certificate, the trustees shall have this perpetual succession, &c., nor is there any other language which makes this a duty essential to the incorporation of the society. That is one answer. And it is claimed, therefore, that the provisions concerning the election or appointment of trustees, and the other formalities specified in section 535, are purely directory and not prerequisite to the grant of corporate power.

Another answer is, that even if the filing of this certificate is made a condition of the corporate existence of the society, still if it be shown that a colorable organization was effected, and it is further shown that the body has since exercised and used corporate privileges and powers, that this is sufficient to make out a corporation *de facto* as regards third persons, notwithstanding a failure to prove a compliance with the conditions and requirements of law, although, in a proceeding directly by the Government, it would not be sufficient to establish a corporation *de jure*.

Certain acts of user of corporate powers were referred to. That is to say, certain conveyances were offered in evidence made to or from the Fifth Baptist Church *eo nomine*, and this was supposed to establish a user of corporate privileges.

There is a manifest difference between a special act of incorporation and a general act of incorporation such as we have in force here. If a special law incorporates certain individuals by name, and they can show that they have subsequently exercised corporate powers, *i. e.*, acted as a corporation, the authorities have held that,

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as against third persons, that is a sufficient evidence of a corporation *de facto*, notwithstanding a failure to comply with some of the conditions of the law. It would not be sufficient to show a charter to certain persons which required certain acts to be performed in order to amount to an organization under the charter, without going further. Nor would it be sufficient to show that any body of men had simply called themselves a corporation and assumed to act as such, without showing a charter.

Where there is a general incorporation act, it would be equally insufficient for any body of men to show that they had simply been acting as a corporation, without going further and showing some authority to do so. Nor would it be sufficient in addition to that to show or to offer in evidence, or invite attention simply to the fact that a general act of incorporation was in force in the jurisdiction. It would be necessary further to show that that general act of incorporation had become the special charter of these individuals in some way or other in order to make out a case of a corporation *de facto*. In order to do that, it is necessary to show some steps taken towards an organization under the general incorporation act. Whether a mere tentative or colorable organization, supported by proof of user, would be sufficient, has been discussed here with considerable ability and show of authority, and it is a question upon which there may be a difference of opinion.

But the trouble here is that, apart from this certified transcript offered in evidence, there is nothing in the case, no evidence *aliunde*, to show that this religious body ever elected any trustees in order to get the benefit of this act, which is the very first step towards a corporate organization, or that any other thing was done towards this end.

The controversy, therefore, is reduced to this question, whether the paper offered in evidence here is, in itself, sufficient proof of corporate organization. I have already stated that this paper is not the paper which the law directs to be recorded. It complies with only one out of four particulars which the law prescribes for such a paper.

If there is anything well settled, it is that, if a paper be placed on record, which is neither directed or authorized to be recorded, the record is no evidence of the existence or contents of such original paper, and still less of any facts set forth, recited or declared in such paper. This certified copy of the certificate appearing on the land records is, therefore, no evidence that there ever was any such paper executed, and is no evidence that there ever was an election of trustees for the obtaining of the benefits of the acts of Congress. Consequently, the record is barren of any evidence whatever tending to show the incorporation of this religious society under the general incorporation act, and the counsel below was right in asking the court to instruct the jury to find a verdict for the defendant, on the ground that plaintiff had failed to prove that it was a corporation, and that application being refused, there was error, and therefore a new trial must be granted.

Married Women Traders.

[American Law Register.]

(*Concluded from last week.*)

II.—THE INCIDENTS OF MARRIED WOMEN'S CAPACITY TO TRADE.

Sec. 8. *Status, Rights and Liabilities of Married Women Traders, Generally.*—The status, rights and liabilities of married women traders, have been already to some extent discussed, and the importance, in this connection, of considering the source of a particular trader's capacity in any particular case must be apparent. Generally speaking, when a married woman can trade only by virtue of her ownership of equitable or statutory separate estate, she cannot trade on her personal credit or act as a *feme sole*; (O'Daily v. Morris, 31 Ind., 111, 112; Glover v. Alcott, 11 Mich., 470, 485; Robinson v. Wallace, 39 Penn. St., 133); but can only deal with the property so that the profits will enure to her own benefit (Mitchell v. Sawyer, 21 Iowa, 582, 583; Carey v. Burruss, 20 W. Va., 571, 579), and can only render it liable for her debts by charging it—contracting with reference to it, etc.—her contracts being valid against it, not because she is a trader, but because they are such as may be enforced in equity or under the property acts. See Tillman v. Shackleton, 15 Mich., 447; Chapman v. Briggs, 11 Allen, 547; Manderbach v. Mock, 29 Penn. St., 43, 47; Todd v. Lee, 16 Wis., 480, 483

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So, when she trades simply as her husband's agent, though she binds him she does not bind herself personally. See Conklin v. Doul, 67 Ill., 355, 357; Tuttle v. Hoag, 46 Mo., 38, 41. She may have the profits if he chooses to let her keep them (see Penn v. Whitehead, 17 Gratt., 503, 512), but he and the business are liable for the debts contracted by her on its behalf. Partridge v. Stocker, 36 Vt., 108, 114. When, however, she may trade personally, by virtue of her husband's abandonment, etc., by custom or by statute, she can trade just as if unmarried. Abbey v. Deyo, 44 Barb., 374, 381; unless, of course, the statute limits her capacity. Young v. Gori, 13 Abb. Pr., 13, 14. In such case, as will now be shown, she, for the purposes connected with her business, has the status of a *feme sole*, the fullest rights to the enjoyment of the profits of the business, and the fullest liabilities for its debts.

Sec. 9. *Express Powers of Married Women Traders.*—Most of the statutes as to married women traders expressly provide that they shall trade "as if *sole*," and under such statutes no special questions seem to have arisen. See Berry v. Zeiss, 32 U. C., C. P., 231, 239; Porter v. Gamba, 43 Cal., 105, 109; Martinez v. Ward, 19 Fla., 175, 187, 188; Kingman v. Frank, 33 Hun, 471; Williams v. Lord, 75 Va., 390, 398, 399; Krouskop v. Shontz, 51 Wis., 204, 217; the main questions are as to the implied powers of married women traders, and are discussed below. In one case the naming of certain powers was held a denial of all other powers. Bradstreet v. Baer, 41 Md., 19, 23; Cruzen v. McKaig, 57 Id., 404, 462.

Sec. 10. *Implied Powers of Married Women Traders.*—Under statutes enabling a married woman to trade and not limiting her capacities, she may trade precisely as if unmarried; she is, as to her business, a *feme sole*, and may do all things incidental to trading in general, and all things usual and proper in the particular trade in which she is engaged. Young v. Gori, 13 Abb. Pr., 13, 14, note. See Berry v. Zeiss, 32 U. C., C. P., 231, 239; Trieber v. Stover, 30 Ark., 727, 730; Camden v. Mullen, 29 Cal., 564, 566; Porter v. Gamba, 43 Id., 105, 109; Rockwell v. Clark, 44 Conn., 534, 536; Martinez v. Ward, 19 Fla., 175, 187; Nispel v. Laparle, 74 Ill., 306, 308; Wallace v. Rowley, 91 Ind., 586, 589; Tallman v. Jones, 13 Kans., 438, 445; Mitchell v. Sawyer, 21 Iowa, 582, 583; Snow v. Sheldon, 126 Mass., 332, 334; Knowles v. Hull, 99 Id., 562, 564; Rankin v. West, 25 Mich., 195, 201; Allen v. Johnson, 48 Miss., 413, 418; Netterville v. Barber, 52 Id., 168, 172; Youngworth v. Jewell, 15 Nev., 45, 47; Wheaton v. Phillips, 12 N. J. Eq., 221, 223; Barton v. Beer, 35 Barb., 78, 80; James v. Taylor, 43 Id., 530, 531; Abbey v. Deyo, 44 Id., 397, 301; Adams v. Honness, 62 Id., 326, 336; Wood v. Sanchey, 3 Daly, 197, 198; Nash v. Mitchell, 71 N. Y., 200, 203; Frecking v. Rolland, 53 Id., 422, 425; Bodine v. Killeen, Id., 93, 96; Baum v. Mullen, 47 Id., 577, 579; Sammis v. McLaughlin, 35 Id., 647, 650; Kingman v. Frank, 33 Hun, 471; Morgan v. Perhamus, 36 Ohio St., 517; Silveus v. Porter, 74 Penn. St., 448, 451; Wilthaus v. Ludecus, 5 Rich., 326, 329; Newbiggin v. Pillans, 2 Bay, 162, 165; Williams v. Lord, 75 Va., 390, 398; Krouskop v. Shontz, 51 Wis., 214, 217; Dayton v. Walsh, 47 Id., 113, 120. The object of these statutes is not only to do justice to wives (Youngworth v. Jewell, 15 Nev., 45, 47), but also to encourage trade. See McDaniel v. Cornwall, 1 Hill (S. C.) 428, 429.

To illustrate: She may engage in any legitimate calling. Guttman v. Scannell, 7 Cal., 455, 459. She may conduct her business personally or by agent; she may have her manager (Cooper v. Ham, 49 Ind., 393, 416), her salesmen and clerks (Guttman v. Scannell, 7 Cal., 455, 459; Abbey v. Deyo, 44 Barb., 374, 381); she may be a partner, silent or active (Parshall v. Fisher, 43 Mich., 529, 534), as will be shown; and she may, unless this is prohibited by statute (see Porter v. Gamba, 43 Cal., 105, 109), have her husband as her agent (Guttman v. Scannell, 7 Cal., 455, 459; Bellows v. Rosenthal, 31 Ind., 116; Rankin v. West, 25 Mich., 195, 200; Lockwood v. Cullin, 4 Robt., 129, 136); though, as will be shown, whether she may be a partner with him is disputed. She need not unless the statute so provides (*Ex parte* Franklin, 79 Ky., 497, 498), have separate property to begin with (Tallman v. Jones, 13 Kans., 438, 445; Dayton v. Walsh, 47 Wis., 113, 120); she may start out on credit (Young v. Gori, 13 Abb. Pr., 13, 14, note), or use property given her by her husband (Lockwood v. Cullin, 4 Robt., 129, 136), though, in the latter case his creditors may have rights. See Penn v. Whitehead, 12 Gratt. 74.

The capital and stock in trade (Lovell v. Newton, L. R., 4 C. P. Div., 7, 12; James v. Taylor, 43 Barb., 530, 531), of her business, as well as the profits (Mitchell v. Sawyer, 21 Iowa, 582, 583; Sammis v. McLaughlin, 35 N. Y., 647, 650; Silvers v. Porter, 74 Penn. St., 448, 457; Meyers v. Rahte, 46 Wis., 655, 659; Dayton v. Walsh, 47 Id., 113, 110) are hers; and such property, though in the joint possession of herself and her husband, is in

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her possession—the possession following the title. Newbrick v. Dugan, 61 Ala., 251, 253; 23 Am. Law Reg. (N. S.), 627. She may, on credit, purchase goods for her trade (Nispel v. Laparle, 74 Ill., 306, 308; Frecking v. Rolland, 53 N. Y., 422, 425), or buy land or seed for farming purposes (Camden v. Mullen, 29 Cal., 564, 566; Chapman v. Foster, 6 Allen, 136, 138); or rent a store (Knowles v. Hull, 99 Mass., 562, 564); or contract for her services (Adams v. Honness, 62 Barb., 326, 336); or contract for working a quarry—for the laborers and mules (Netterville v. Barber, 52 Miss., 168, 172); she may, as if sole, transfer a note received by her in the course of trade (Rockwell v. Clark, 44 Conn., 534, 536); and she may even sell out her business, and agree not to use the same name again. Morgan v. Perhamus, 36 Ohio St., 517. She is personally liable on all contracts made by her in the course of her business (Barton v. Beer, 35 Barb., 78, 80; see Trieber v. Stover, 30 Ark., 727, 730; Nispel v. Laparle, 74 Ill., 306, 308), even as endorser of a note (Wilthaus v. Ludecus, 5 Rich., 326, 327); she is liable for the frauds, etc., of her employees (Baum v. Mullen, 47 N. Y., 577, 579), and is estopped, as if sole, from denying their right to represent her (Bodine v. Killeen, 53 N. Y., 93, 96); so, she is liable, as if sole, for goods consigned to her (Newbeggin v. Pillans, 2 Bay, 162, 165); she may make a deed for the benefit of creditors (Schumann v. Peddicord, 50 Md., 560), and take the benefit of the insolvent or bankrupt laws. See *Ex parte* Holland, L. R., 9 Ch. Div., 307, 311; *In re* Kinkead, 3 Biss., 405, 410. But see Relief v. Schmidt, 55 Md., 97. Whether she is in business is a question of fact (see Jarman v. Wooloton, 3 Term, 618, 622; Glover v. Alcott, 11 Mich., 471, 479; Abbey v. Deyo, 44 N. Y., 343; Partridge v. Stocker, 36 Vt., 108, 113), though, if preliminaries are required, as the filing of a declaration, whether the requirements have been fulfilled is, of course, in part a question of law. So, whether a particular transaction was in the course of her business, is a question of fact. Camden v. Mullen, 29 Cal., 564, 567. When she sues she must allege and prove that she was engaged in business, and that the right of action arose in the course thereof (Smith v. New England, 45 Conn., 415, 420), and when she is sued these facts must be alleged and proved by the plaintiff. Baum v. Mullen, 47 N. Y., 577, 579; Wood v. Sanchey, 3 Daly, 197, 198; Nash v. Mitchell, 71 N. Y., 200, 203.

Sec. 11. *Married Women Traders as Partners.*—It has been said that a married woman trading in equity with her equitable separate property, may enter into partnership (Penn v. Whitehead, 17 Gratt., 503, 512); but this statement must be taken with limitations. For the normal contract of partnership is a personal contract involving a personal capacity (Carey v. Burruss, 20 W. Va., 571, 576; 43 Am. Rep., 790), which a married woman does not have in equity or under mere separate property acts. Accordingly, it is settled that statutes securing to married women their property, with the rents, profits, increase, etc., do not enable them to enter into partnership. Bradstreet v. Baer, 41 Md., 19, 23; Mayer v. Soyster, 30 Id., 403; Howard v. Stephens, 52 Miss., 239, 244; Bradford v. Johnson, 44 Tex., 381, 383; Carey v. Burruss, 20 W. Va., 571, 576; 43 Am. Rep., 790. At common law, when a female partner married, the partnership was dissolved (Bassett v. Shepardson, 52 Mich., 3; Alexander v. Morgan, 31 Ohio St., 546, 550); and now she cannot be a partner if she has no capacity to trade personally (see Swasey v. Antram, 24 Ohio St., 87, 95; Carey v. Burruss, 20 W. Va., 574, 575; 43 Am. Rep., 790), or if she is expressly prohibited by the statute enabling her to trade (see Todd v. Clapp, 118 Mass., 495, 496), or so far as she is thereby partially prohibited (see Porter v. Gamba, 43 Cal., 105, 109), as she is in some States. But as she has, under statutes giving her the capacity to trade generally, the personal capacity to trade as if sole, and the power to pursue all the usual methods of trade, by the weight of authority, she may under such acts trade in partnership (Kinkead, 3 Biss., 405, 410; Camden v. Mullen, 29 Cal., 564, 565; Francis v. Dickel, 68 Ga., 255, 258; Preusser v. Henshaw, 49 Iowa, 41, 44; Westphal v. Henney, 49 Id., 542, 543; Plumer v. Lord, 5 Allen, 460, 462; Parshall v. Fisher, 43 Mich., 529, 532, 534; Newman v. Morris, 52 Miss., 402, 406; Zimmerman v. Erhard, 58 How. Pr., 11, 13; 8 Daly, 311; Bitter v. Rathman, 61 N. Y., 512, 513; Scott v. Conway, 58 Id., 619; Graff v. Kennedy, 31 Alb. L. J., 2; Silveus v. Porter, 74 Penn. St., 448, 449; Krouskop v. Shontz, 51 Wis., 204, 217; Horneffer v. Duress, 13 Id., 603, 605)—she may even be a secret partner. See Parshall v. Fisher, 43 Mich., 529, 534; Scott v. Conway, 58 N. Y., 619; Bitter v. Rathman, 61 Id., 512, 513.

Still in a few cases and on different grounds, this capacity to be a partner has been denied. Haas v. Shaw, 91 Ind., 384, 389, 396; Montgomery v. Sprankle, 31 Id., 113, 115; Maghee v. Baker, 15 Id., 254, 257; Bradstreet v. Baer, 41 Md., 19, 23; Cruzen v. McKaig, 57 Id., 454, 462; Carey v. Burruss, 20 W. Va., 571, 576; 43 Am. Rep., 790. So also as she

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is a *feme sole* in her trade, and may therein employ general or special agents, and may employ her husband as such, there seems to be no reason why she should not be able, when she can be partner at all, to be the partner of her husband, and accordingly many cases hold (*In re* Kinkead, 3 Biss., 405, 410; Francis v. Dickel, 68 Ga., 255, 258; Newman v. Morris, 52 Miss., 402, 406; Zimmerman v. Erhard, 58 How. Pr., 11, 13; Graff v. Kennedy, 31 Alb. L. J., 2), while others assume (see Camden v. Mullen, 29 Cal., 554, 565; Westphal v. Henney, 69 Iowa, 542, 543; Parshall v. Fisher, 43 Mich., 529, 532, 534; Silveus v. Porter, 74 Penn. St., 448, 449; Krouskop v. Shontz, 51 Wis., 204, 217; Horneffer v. Duress, 13 Id., 603, 604), that she can. But this has been strenuously denied, on the ground that even where a married woman may contract, she cannot at law, without express authority, contract with her husband, and that the particular statute enables her to trade on her "*separate*" account. Lord v. Parker, 3 Allen, 127, 129; Edwards v. Stevens, Id., 315; Plumer v. Lord, 5 Id., 460, 462; Allen v. Johnson, 48 Miss., 413, 419. See Haas v. Shaw, 91 Ind., 384, 389. To this it may be replied that if a wife may employ her husband as her agent, as all admit she can, it is not consistent to say that she cannot contract with him at all, and that the word "separate," in the statutes, refers to the wife's status; not to the manner in which she shall trade. Zimmerman v. Erhard, 58 How. Pr., 11, 13, 14.

In such cases she cannot be a partner, and therefore could not be held liable as partner on a note not signed by her (Carey v. Burruss, 20 W. Va., 571, 582; 43 Am. Rep., 790; Plumer v. Lord, 7 Allen, 481, 485), she may, nevertheless, be liable for her individual acts (Cruzen v. McKaig, 57 Md., 454, 462), and she does not in such cases lose her property put into the firm business. Maghee v. Baker, 15 Ind., 254, 257. So even when she cannot join a firm of which her husband is a member (Plumer v. Lord, 7 Allen, 481, 484), she may, after his retirement, go in, and, on a new consideration, become liable for pre-existing partnership debts. See Preusser v. Henshaw, 49 Iowa, 41, 44. So, though she cannot be a partner, she may jointly lease and share the profits of joint property (Allen v. Johnson, 48 Miss., 413, 419), and be bound by her husband's acts as her agent with respect thereto. Reiman v. Hamilton, 111 Mass., 245, 247. In a few cases, without speaking of husband and wife as partners, equity has decreed an apportionment of the profits of a business carried on by them jointly. See Glidden v. Taylor, 16 Ohio St., 509, 522; Penn v. Whitehead, 17 Gratt., 503, 513.

Sec. 12. *Married Women as Corporators, Stockholders, &c.*—Very nearly the same questions arise in considering a married woman's capacity to be an incoporator as those which are involved in her right to be a partner. Plumer v. Lord, 5 Allen, 460, 462. Corporators enter into a mutual and personal contract, which is concluded by the act of incorporation (Tyler on Corporations, sec. 31); and therefore without personal capacity to contract, a married woman could not be an incorporator. But, as business is very commonly carried on by corporations, a married woman with a general capacity to trade would, it seems, have by implication the capacity to be an incorporator. The fact that the corporation laws provide that "any persons" may be an incorporator, would not give such capacity to a married woman under disabilities, for such general laws apply only to persons *sui juris*. See rule discussed in Md. Law Record, March 1st, 1884. But a married woman may be a stockholder, holding her stock as any other *chose in action*; and it has been held that when her *choses in action* are her separate property she is liable as any other stockholder for assessments, &c. Anderson v. Line, 14 Federal Reporter, 405, 306; The Reciprocity Bank, 22 N. Y., 9, 15.

It is of course difficult to state with certainty the law on so complicated a subject as that discussed in this article, and many of the points touched upon would bear much elaboration; but we have endeavored simply to collect the cases relating to the trade of married women and to give in a few words the law as it appears therein.

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1. *Creditor and Surety.*—A creditor who has or acquires a lien on the property of his debtor as a security for his debt, is a trustee of the same for the benefit of the surety, if there be one, and if by any willful act of his such lien is lost or destroyed, to the injury of the surety, the latter is so far discharged from liability for the debt.

2. *Idem: Burden of Proof.*—When a creditor relinquishes a lien he may have on the property of his debtor, in a suit to collect his debt from the surety, the burden of proof is on him to show that the surety was not injured by such relinquishment.

3. *Conclusions of Law.*—It is sometimes necessary and proper in equity pleadings to make deductions from the facts stated, that are more or less conclusions of law. [Allen v. O'Donald; U. S. Circuit Court District of Oregon, May, 1885.]

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Treasury Department

TREASURY DEPARTMENT,
FIRST COMPTROLLER'S OFFICE,
WASHINGTON, D. C., *July* 13, 1885.

IN THE MATTER OF THE PAYMENT OF A COMPOUND INTEREST TREASURY NOTE FOR $50, DATED JULY 15, 1864, AND NUMBERED 2424 A.

The honorable Treasurer of the United States having paid the above note and its interest, amounting to $59.70, and the honorable First Auditor having disallowed said payment, I am called upon to pass upon the question.

I am informed by the argument that the honorable First Auditor disallowed the same because the said note purports to have been issued under an act of Congress of July 2, 1864 (the words "Act of July 2, 1864," are printed on the face of the note), when, in point of fact, there is no such act of Congress authorizing the issue of any such note.

The first question to be determined is, is the note genuine? Was the same issued and put in circulation by the United States, and was there any act of Congress authorizing said note to be issued?

On the 30th day of June, 1864, Congress passed an act providing ways and means for the support of the Government, and for other purposes. See 13 Stat., 218. By the first section of said act it is provided that—

"The Secretary of the Treasury be, and he is hereby, authorized to borrow, from time to time, on the credit of the United States, four hundred millions of dollars, and to issue therefor coupon or registered bonds of the United States, redeemable at the pleasure of the Government, after any period not less than five nor more than thirty years," &c.

By the second section of said act it was further enacted, "That the Secretary of the Treasury may issue on the credit of the United States, and in lieu of an equal amount of bonds authorized by the preceding section, and as a part of said loan, not exceeding two hundred millions of dollars, in treasury notes of any denomination not less than ten dollars, payable at any time not exceeding three years from date, or, if thought more expedient, redeemable at any time after three years from date, and bearing interest not exceeding the rate of seven and three-tenths per centum, payable in lawful money at maturity, or, at the discretion of the Secretary, semi-annually. And the said Treasury notes may be disposed of by the Secretary of the Treasury, on the best terms that can be obtained, for lawful money; and such of them as shall be made payable, principal and interest, at maturity, shall be a legal tender to the same extent as United States notes for their face value, excluding interest, and may be paid to any creditor of the United States at their face value, excluding interest, or to any creditor willing to receive them at par, including interest," &c.

By the 6th section of said act the form, &c.. of said notes to be issued was directed, and is as follows:

"And the Treasury notes and United States notes authorized by this act shall be in such form as the Secretary of the Treasury shall direct, and shall bear the written or engraved signatures of the treasurer of the United States and the register of the Treasury, and shall have printed upon them such statements, showing the amount of accrued or accruing interest and the character of the notes, as the Secretary of the Treasury may prescribe; and shall bear, as a further evidence of lawful issue, the imprint of the seal of the Treasury Department, to be made under the direction of the Secretary of the Treasury as before directed."

We have here an act of Congress authorizing the Secretary of the Treasury to issue and dispose of, on the best terms which he could obtain for lawful money, Treasury notes of the United States of the above form and description, not exceeding two hundred millions of dollars. Does the note in contest answer to the description of the above form, &c.? I will go further and ask was it really issued, sold and put in circulation by the Secretary of the Treasury by virtue of said act? Its date is July 15, 1864—after the passage of the act. Its denomination is over $10, the lowest number specified in the act. Its interest is six per cent., being within the limit prescribed by the act, said interest to be paid semi-annually as stated in said act, and also redeemable at any time after three years. It also has engraved on it the signature of the Treasurer of the United States and the Register of the Treasurer; it has printed on it the amount of the accrued or accruing interest, and bears the imprint of the seal of the Treasury Department—all the above as directed by the provisions of said act. The books of the Treasurer of the United States show it is one of a series of notes issued under said act; and, to my mind, it is unquestionably a genuine note. It is found in the hands of some one, and the Government is presumed to have received value for it and to have put it into

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circulation as directed by said act.

This being so, should the Government redeem the same? The note says on its face: "Three years after date the United States will pay to bearer fifty dollars, with six per cent. interest compounded semi-annually." It does not say that it was issued under the act of July 2, 1864, or any other act. Hence, the purchaser of said note, seeing that it had the appearance of being a genuine note, would only look to see whether there was any act of Congress authorizing the issue and sale of such a note. The act of June 30, 1864, in describing the character of the notes to be issued thereunder, did not require that the act should be referred to on the face of the note. It is conceded that there was no act of July 2, 1864, under which said note could have been issued, and the imprint on its face (act of July 2, 1864), if it had reference to any act under which the note was issued, was a mistake, but that cannot impair the validity of said note.

It has been said by an eminent writer: "A mistake in matters which are only incidental to, and are not of the essence of, a transaction, and without, or in the absence of which, it is reasonable to infer that the transaction would nevertheless have taken place, goes for nothing." This, being a genuine note, was put in circulation by the Government as negotiable paper, and the Government is bound to redeem it. It was not necessary to put on the face of said note the act under which it was issued; but I go further and say: If, on the face of said note, it had been stated that this note is issued under the act of July 2, 1864, it would not have rendered the note void; it would still be a good note under and by virtue of the act of June 30, 1864.

We are not without some authority upon this subject. In 94 U. S. Sup. Ct. Decisions, page 202, in the case of the Commissioners of Johnson County v. January, we have a parallel case. In that case it appears that in the recitals in the bonds the wrong act was referred to. The bonds issued were to aid in building a railroad. A holder of some of the coupons on these bonds sued for their value. The court, in reasoning upon the case, says:

"The road was finished, and has since been in operation. The county and its inhabitants are in the enjoyment of the benefits arising from it. There is no imputation of any taint of fraud upon either side. . . . The county has received what it contracted to receive, and has paid what it contracted to pay. The plaintiff in the suit is the *bona fide* holder of the bonds. A case of stronger equity can hardly exist. . . . The act mentioned in the recital in the bond was erroneously referred to. That act does not affect the case, and may be laid out of view."

Further it says, in speaking of the bonds: "It is true they refer to the wrong statute, but *falsa demonstratio non nocet*. The bad here does not hurt the good." And the court decided that the bonds were good. See the whole case.

In the case of the Anderson County Commissioners v. Beal (113 U. S. Sup. Ct. Rep., p. 227), another case is given. It appears in that case, that, in issuing bonds to aid in the construction of a railroad, there was an incorrect recital of the act in the bonds. But the court says:

"The bond recites the wrong act, but if that part of the recital be rejected, there remains the statement that the bond is executed and issued in pursuance to the vote of the electors of Anderson county, of September 13, 1869."

Here an act of the legislature of Kansas had been passed, authorizing the voters of Anderson county to vote on the question of issuing the bonds to aid in building a railroad. Having so voted, and the proposition having been carried, the authorities having so declared the same, and that fact appearing on the face of the bonds, the same are good in the hands of a *bona fide* holder for value, although the wrong act was referred to in the bond, giving authority to take the vote on issuing the bonds. The act had been passed authorizing the vote to be taken, the vote had been taken authorizing the officers to issue the bonds, which had been issued, but referred to the wrong act; yet the Supreme Court decides that said bonds are valid, and must be paid when presented by *bona fide* holders.

There are some other reasons why, in my judgment, if any act had been passed by Congress prior to the 15th day of July, 1864, authorizing the issue of said note, and it had been so issued and put in circulation by the proper authorities, the *bona fide* holder should be paid; but I deem the above authorities and reasoning as sufficient.

I am, therefore, clearly of opinion that the note in question is genuine, that it was issued and put in circulation under, and by virtue of, the act of June 30, 1864, that the inscription on said note, "Act of July 2, 1864," was so made by mistake, that said inscription does not invalidate the same; and that nothing appearing that said note had theretofore been paid, the Treasurer did right in redeeming it, and should be allowed credit in

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the settlement of his accounts for the amount which he paid for the same.

M. J. DURHAM,
Comptroller.

NOTES OF RECENT DECISIONS.

Sale: Fraudulent Concealment.—1. If a vendor conceals from the vendee some fact which is material to the interest of the vendee, which is within the knowledge of the vendor, and which it is his duty to disclose, the concealment is fraudulent and vitiates the sale.

2. A duty to disclose exists, when it expressly appears by the language of the parties or is necessarily implied from the circumstances of the case, that one party is actually reposing trust and confidence in the other and the latter knows it.

3. When a vendor, before and without reference to any sale, has published false statements touching the value of the article sold, and in the negotiations for sale he is apprised that the vendee has heard those statements and is relying on their truth in making his purchase, and has no available means of ascertaining their falsity, silence on the part of the vendor is a fraudulent concealment vitiating the sale.

4. Where a sale of bank stock belonging to an estate was effected by one of three executors through a fraudulent concealment; *Held*, That the vendee could rescind the sale, and was entitled to a decree against all the executors for reimbursement out of the estate, not only of the purchase price, but also of any assessments upon the stock which he had been legally compelled to pay as shareholder. [Oscar Green v. Executors of Wm. James; N. J. Court of Appeals, March, 1885.]

The New York statute making information acquired by the physician in his professional capacity privileged, and prohibiting its disclosure unless expressly waived by the patient, is founded on public policy, and its provisions cannot be waived except as specially provided. The prohibition remains in force after the death of the patient as well as during his life, and an executor or administrator is not a personal representative of the patient in such a sense as to authorize him to waive it. He represents simply in respect to rights of propert. [Westover, as executor, v. Ætna Life Ins. Co.; Court of Appeals of New York, April, 1885.]

Damage to goods and injury to the person, although they have been occasioned by one and the same wrongful act, are infringements of different rights and give rise to distinct causes of action; and therefore the recovery in an action of compensation for the damage to the goods, is no bar to an action subsequently commenced for the injury to the person.

So *held* by Brett, M. R., and Bowen, L. J., Lord Coleridge, C. J., dissenting.

The plaintiff brought an action in a county court for damage to his cab, occasioned by the negligence of the defendant's servant, and having recovered the amount claimed, afterwards brought an action in the High Court of Justice against the defendant, claiming damages for peronal injury sustained by the plaintiff through the same negligence.

Held, by Brett, M. R., and Bowen, L. J., Lord Coleridge, C. J., dissenting, that the action in the high court was maintainable, and was not barred by the previous proceedings in the county court. [Brunsden v. Humphrey, English Court of Appeal.]

THE duty of a railroad company towards a passenger taken sick on the train was under consideration in a recent case in Kansas, in Atchison, T. & S. F. R. Co. v. Weber (6 Pac. Rep., 877).

A passenger was afflicted with convulsions, apparently delirium tremens, and was taken from the floor of the car in an unconscious condition.

The jury found that he lay on the platform of the company's depot in an exposed condition for over an hour before he was taken charge of by the Overseer of the Poor, and that during that time he sustained such injuries as resulted in his death. But it appeared from the evidence that the company's servants placed him in charge of the Overseer of the Poor, within a few minutes after he was removed from the train, and as the jury allowed more than the nominal damages, the verdict was set aside.

The court say: The statute makes it the duty of an Overseer of the Poor of any township or city to grant temporary relief to any non-resident who may be found lying sick therein, or in distress, and without friends or money, and the expense of providing such relief is to be paid out of the county treasury. Commissioners of Pottawatomie Co. v. Morrall, 19 Kan., 141. This was the condition of Weber; he was in distress, sick and without friends or money. It became the duty of the overseer, when his attention was properly called to Weber's condition, to take charge of him and make provision for his temporary relief. We think that if the railway company carefully and prudently removed him from

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the train, and promptly placed him in the care of the Overseer of the Poor, who received and took charge of him, under the facts of this case, it has exercised that reasonable care and diligence in making provisions for him that the law requires.

WILL some student at law give the law of descent among collateral heirs under the following relationship:

Died—In the town of Columbia, May 17, 1875, infant son of Ulysses and Ada Gage. The grandparents on the mother's side were cousins; the great-grandmothers on the mother's side were sisters; on the father's side the grandparents were cousins, and both were cousins to both of the great-grandmothers on the mother's side; the great-great-grandmothers on the mother's side was a sister to the great-grandmother on the father's side; the great-great-grandfather on the mother's side was a brother to both great-great-grandfathers on the father's side; the great-great-grandfather on the mother's side was an uncle to the grandmother on the father's side, and double uncle to the grandfather on the father's side; the great-grandparents on the father's side were double uncle and aunt to the great-grandmother on the mother's side.

POSTING LETTERS.—At a lecture delivered in London a few nights ago the question was raised of the possibility of the post office supplying, wherever it may be desired, official proof of the posting of letters. Unquestionably if this could be done it would be both a convenience to the public and of practical value in the administration of justice. At present the very loosest evidence of the posting of letters is often accepted in the courts of law, and owing to the overwhelming probability of a letter when once written, directed and stamped, duly reaching its destination, such evidence has a tendency to become still looser. It has happened within our experience that the evidence of a plaintiff that he placed a letter, stamped and addressed, on the corner of a table where his business letters were always placed, and whence it was the duty of an office boy to remove them from time to time, for posting, has been admitted by a judge as proof of the posting of the letter. It is true that an official receipt can already be obtained for a registered letter; but the fee of registration is so high as practically to prohibit the process, except in the case of letters of great value or importance. What is now suggested is that forms should be issued at about 3*d*. a dozen, to be filled up with particulars of the address by the sender of the letter, and simply examined, stamped and returned at the receiving office. A process so simple as this could be carried out at a very trifling cost to the department, and might very probably—as has already been proved with other small conveniences of a similar kind—be converted into a profitable source of revenue.—*London Law Times.*

The Courts.

SUPREME COURT OF THE DISTRICT OF COLUMBIA

GENERAL TERM.

July 13, 1885.

Stewart v. Smith. Decree below affirmed.

Patch v Davis. Exceptions overruled and auditor's report affirmed.

Schillinger v. Cranford. Motion for rehearing overruled.

Keyser v. Hitz Decree signed.

Mackall v. Mackall. Decree for sale. W. B Webb appointed trustee.

Adjourned to September 14.

IN EQUITY.—New Suits.

July 13, 1885.

9529. Edward F. Droop v. Henriette C. Metzerott et al. To distribute partnership assets, and for receiver. Com sol, A. C. Bradley.

July 15, 1885.

9530. Charles Ewan, jr., v. James T, Prichard et al. Injunction. Com sol, George E. Hamilton.

9531. Wm. W. Rapley v. John D McPherson et al Release. Com sol. H. T Taggart.

9532 Same v. Reginald Fendall. Release. Com sol, same.

CIRCUIT COURT.—New Suits at Law.

July 11, 1885.

26285. Martin McDermott v. James Carter. Replevin. Pltf's atty. C. S. Moore

26286. George Cowie v. Jeremiah F. Downey, adm'r. Notes. $195.40. Pltf's attys, Hagner & Maddox.

26287. Justin McCarthy v. The Western U. Telegraph Co. Damages, $4101. Pltf's attys, Abert & Warner

July 13, 1885.

26288. Julia B. Tenney v. The Dist. of Col. Damages, $5,000 Pltf's attys. Gordon & Gordon.

July 16, 1885.

26289. Robert C. Hewett v Henry Larman Note, $100. Pltf's atty, W. C Stone.

26290. John W. Taliaferro v. The W & G. R. R, Co Damages, $10;000. Pltf's attys, Miller & Forrest

July 17, 1885.

26291. Francis Munsoon v. Potomac Steamboat Co. Damages, $2 200. Pltf's atty, T J. Mackey.

PROBATE COURT.—Justice Hagner.

July 17, 1885.

Estate of Wm G Metzerott. Final notice issued.

Estate of Mhornton Yates. Final notice issued

Estate of Jesse M. Farnum. Final notice issued.

Estate of George Schaffer. Katharine Schaffer appointed administratrix. Bond, $6,000.

Estate of W. Bowles. James Bellew appointed administrator. Bond, $1,600.

Estate of Anna Ridgeway. Will admitted to probate and letters granted to Wm. Ridgeway. Bond, $300.

Estate of Emanuel B. Cator. C. E. Creecy ordered to deliver draft for $210 to administrator.

Estate of Wm. Drane. C. E. Creecy ordered to deliver draft to administrator.

Estate of Isaac Bradley. August 14; appointed for settlement.

Estate of David McIntyre. Time extended for filing answer.

Estate of Serafino Velati. Administrator ordered to transfer bonds.

Estate of Charles King. Will filed for probate.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 17th, 1885.

In the case of Andrew C. Bradley, Administrator of Jessie M. Farnum, dec'd, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 7th day of August, A. D. 1885, at 11 o'clock a. m , for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

Test: 29 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Holding a Special Term for Orphans' Court Business. July 17th, 1885.

In the case of J. Holdsworth Gordon, Executor of Thornton Yates, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 7th day of August, A. D. 1885, at 11 o'clock, a. m., for making payment and distribution under the Court's direction and control; when and where creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

Test: 29 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 17th, 1885.

In the case of Anson S. Taylor, executor of Isaac Bradley, deceased, the executor aforesaid has, with the approval of the court, appointed Friday, the 14th day of August, A. D. 1885, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares(or legacies)or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided. a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 29 H. J. RAMSDELL, Register of Wills

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 17, 1885.

In the case of Henriette C. Metzerott and Samuel Cross. Executors of William G. Metzerott, dec'd, the Executors aforesaid have, with the approval of the Court appointed Friday, the 7th day of August, A. D. 1885, at 11 o'clock, a. m., for making payment and distribution under the court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 29 H. J. RAMSDELL, Register of Wills.
ENOCH TOTTEN and GORDON & GORDON, Solicitors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 16th day of July, A. D. 1885.

ELEANOR THOMPSON v. SARAH J. MUSSER et al. } No. 8774. Eq. Doc. 23.

Ordered that the sale made and this day reported by Reginald Fendall, trustee for the sale of the real estate in this cause mentioned, be ratified and confirmed unless cause to the contrary be shown on or before the 17th day of August, A. D. 1885.

Provided a copy of this order be inserted in the Washington Law Reporter once in each of three successive weeks before said day.

The report states that the property sold for $6,500.

A. B. HAGNER.
A true copy. Test: 29 R. J. MEIGS, Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Holding a Special Term for Orphans' Court Business, July 17th, 1885.

In the matter of the Will of Robert M. Reynolds, late of the District of Columbia, deceased

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Orpha W. Reynolds.

All persons interested are hereby notified to appear in this court on Friday, the 7th day of July next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 29 H. J. RAMSDELL, Register of Wills.
FRANKLIN H. MACKEY, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

HENRY CLARK ET AL. v. HENRY HOHMAN ET AL. } 9836. Eq Doc. 24.

The trustee, Randall Hagner, having reported to the Court that he has sold the real estate in the proceedings in this cause mentioned, to wit, all of original Lots six, seven and eight, in Square west of Square numbered six hundred and ninety-five, on the ground plat or plan of the city of Washington, in the District of Columbia, to E. Kurtz Johnson, at and for the sum of $7606 48, and that the said purchaser has fully complied with the terms of sale:

It is, therefore, this 17th day of July, A. D. 1885, ordered, that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 17th day of August, A. D. 1885.

Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said last named day.

A B. HAGNER, Asso. Justice.
A true copy. Test: 29 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 17, 1885.

In the matter of the Estate of Charles King, late of the District of Columbia. deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration c t. a on the estate of the said deceased has this day been made by Elizabeth King.

All persons interested are hereby notified to appear in this court on Friday, the 7th day of August next, at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 29 H. J. RAMSDELL, Register of Wills.
M. G. EMERY, JR., Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 21st day of July, A. D. 1885.

ANNA ELIZA BARNARD et al., Complainants, v. WILLIAM RUSSELL WHITING and ANNA MCHENRY BARNARD, Defendants. } Equity. No. 9537.

The object of the bill filed herein, is the sale of parts of lots 1 and 2 in Square 167 in the City of Washington, and distribution of the proceeds of such sale among the complainants and defendants.

On motion of the complainants, by Mr. Randolph Coyle, their solicitor, it is by the Court ordered that the defendant, William Russell Whiting, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
True copy. Test: 29 R. J. MEIGS, Clerk.
By M. A. CLANCY, Assistant Clerk.

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Legal Notices.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Leonora A. Ellis, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of July next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 13th day of July, 1885.
HORATIO BROWNING,
EDWARDS & BARNARD, Solicitors. 29 Administrator.

THIS IS TO GIVE NOTICE,
That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Mason Campbell, late of the District of Columbia deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of July next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 14th day of July, 1885
MARY A. CAMPBELL,
29 Executrix, 1115 Mass. Ave., n. w.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Richard T. Merrick, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of July next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 18th day of July, 1885
29 MARTIN F. MORRIS, Executor.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Nannie Merrick, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 18th day of July next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 18th day of July, 1885.
29 MARTIN F. MORRIS, Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 15th day of July, 1885

HARRY W. GREEN ET AL.
v.
EDWARD I. GREEN ET AL. } No. 9257. Eq. Docket 24.

On motion of the plaintiffs, by Messrs. Knott & Ennis, their solicitors, it is ordered that the defendants cause their appearance to be entered herein on or before the first rule day, occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.
By the Court. A B HAGNER, Justice.
True Copy Test: 29 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. June 26th, 1885

In the case of Annie C. Babcock, Executrix of Orville E Babcock, deceased, the Ex'x aforesaid has, with the approval of the court, appointed Friday, the 7th day of August, A D. 1885, at 11 o'clock a m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized with their claims against the estate properly vouched; otherwise the Executrix will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
Test: 26 H J. RAMSDELL, Register of Wills.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 14th day of July, 1885.

CHAS. C. COOMBS
v.
HATTIE F. COOMBS. } No. 9524. In Equity.

On motion of the plaintiff, by Mr. Chas. Thompson, jr., his solicitor, is it ordered that the defendant, Hattie F. Coombs, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.
By the Court. A. B. HAGNER, Justice.
A true copy. Test: 29 R. J. MEIGS. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

MARY B. MOSHER et al.
v.
THEODORE MOSHER et al. } In Equity. No. 8911.

The trustees in the above-entitled cause having made and filed their report of sales of the real estate in the said cause, it is, this 24th day of June, A. D. 1885, ordered, adjudged and decreed, that said sales of the said real estate and said trustees' report be, and the same are hereby ratified and confirmed, unless cause to the contrary thereof be shown on or before the 27th day of July, A D. 1885.
Provided a copy of this order be published in "The Evening Star," and the "Washington Law Reporter," two papers published in the city of Washington, District of Columbia, once in each of three successive weeks before the 27th day of July, A. D. 1885.
The report shows the amount of sales to be $24,365.12.
By the Court. W. S. COX, Justice.
A true Copy. Test: 26 R. J MEIGS, Clerk.

THIS IS TO GIVE NOTICE,
That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of John R. Cathin, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of June, next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 19th day of June. 1885.
CARRIE H. CATHIN.
JOSEPH J. DARLINGTON Solicitor. 28 Executrix.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, this 24th day of June, 1885.

JAMES A. KING et al
v.
JOHN W KING et al } In Equity. No. 9349.

Upon the trustee's report of the sale of part of lot 7, in square 752, in this cause mentioned, it is, this 24th June 1885, ordered, that said sale is hereby ratified and confirmed unless cause to the contrary be shown on or before 24th July, 1885.
Provided this order be published in the Washington Law Reporter once a week for three weeks before said day.
W. S. COX, Justice.
A true copy. 26 Test: R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE:
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Rebecca E. Herron, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of June next: they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 26th day of June, 1885.
JAMES WHITLEY HERRON.
26 Administrator, Star Office.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 2d day of July, 1885.

MARY E. GLANCY
v.
PATRICK GLANCY. } No. 9505. Equity.

On motion of the complainant, by Mr. Oscar Nauck, her solicitor, it is ordered that the defendant, Patrick Glancy, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.
By the Court. W S. COX, Justice.
A true copy. Test: 27 R. J. MEIGS, Clerk.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of John Alexander Blundon, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of July, 1885.

SARAH ELLEN BLUNDEN,

J. B. THOMPSON, Solicitor. 28 Executrix.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. The 10th day of July, 1885.

GEORGE CALLAGHAN v. MARY J. O'FLANNIGAN et al. } 9243. Eq. Doc. 24.

On hearing the report of James Fullerton, trustee, it is, this 10th day of July, A. D. 1885, ordered that the sale reported by said trustee, and the expenses thereof, be confirmed and allowed, without reference to the Auditor, unless cause to the contrary be shown to this Court on or before the 10th day of August next.

Provided, that a copy of this order be published in the Washington Law Reporter once a week for three weeks before said 10th day of August, 1885.

The report states the amount of sale and interest on deferred payments to be $2141.20.

A. B. HAGNER.

A true copy. Test: 28 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 22d day of June, 1885.

ELIZA B. CAUSTEN v. JAMES H. C. YOUNG et al. } No. 9489. Eq. Doc. 24.

On motion of the plaintiff, by Messrs. James H. Taylor and George O Payne, her solicitors, it is ordered that the defendants. James H. C. Young, Josephine de Carvallo, Manuel Carvallo, Victor Carvallo, Henrietta J. de Bueneventi, Marino Bueneventi, Robert Shriver, Henry Shriver, Eliza Fundenburg, Stanley Fundenburg, Mary C. Swartzwalder, Henry Swartzwalder, Henrietta Shriver, Henry Johnson, Robert Shriver, administrator, Sarah Oresap, administratrix, cause their appearance to be entered herein on orbefore the first rule-day occuring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.

A true copy 26 Test: R J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

GEORGE T. JACOBS, Complainant, v. JOHN W. POST et al., Defendants, } In Equity. No. 9335.

Upon consideration of the report of the trustee, Daniel O'C. Callaghan, and this this day filed, it is, this 26th day of June, A. D 1885, ordered that the sale of the Capital Stock of The Post Combination Sewing Machine Company, owned by the defendant, be, and the same shall stand finally ratified and confirmed, unless good cause to the contrary be shown on or before Saturday, the 18th day of July next.

Provided a copy hereof be published once a week for three weeks prior to said date in the Law Reporter.

The report states that the stock was bid off at $23 per share to George T. Jacobs.

W. S. COX, Justice.

A true copy. 26 Test: R. J. MEIGS, Clerk

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 3d, 1885.

In the matter of the Estate of Robert M Reynolds, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by Orpha W. Reynolds.

All persons interested are hereby notified to appear in this Court on Friday, the 24th day of July next, at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice

Test: 27 H. J. RAMSDELL, Register of Wills.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 29th day of June, 1885.

JOHN J. ALBRIGHT v. R. S. HARDESTY et al. } No 9504. Eq. Doc. 25.

On motion of the plaintiff, by Messrs. Worthington & Heald, his solicitors, it is ordered that the defendants, Hortense Hardesty, Elizabeth Hardesty and Julia Hardesty, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.

A true copy Test: 27 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Wilhelm Bandel, late of Bregenz, Austria, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 3d day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 3d day of July, 1885.

JAMES L NORRIS,

JNO. E. NORRIS, Solicitor. 28 Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Sitting in Equity, June 26, 1885.

MARY T. DAYTON et al. v. CORNELIA H. DAYTON et al. } 7801. Eq. Doc. 21

It appearing to the Court that, in the order passed in this cause on the 18th day of June, 1885, the name of John Miller was, inadvertently and through a clerical error, inserted as the purchaser of lot numbered 22, in square numbered 512, instead of that of Albert F. Fox, who was the real purchaner thereof, it is, by the Court, this 26th day of June, 1885, ordered, that said order be stricken out and annulled.

And in is further ordered that the sale of said lot to said Albert F. Fox be confirmed, in accordance with the written offer of said Fox annexed to the report of James M. Johnston, trustee, which was filed herein on June 17th, 1885

Provided the usual publication be made requiring cause to be shown against the ratification of said lot.

W S COX, Justice.

A true copy. 26 test: R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business. June 26th, 1885.

In the case of Joseph J. Waters, Administrator of Henry Douglas, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 17th day of July A. D. 1885, at 11 o'clock, a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 26 H. J RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, sitting in Equity. July 6, 1885.

SAMUEL A. PEUGH, Complainant, against HENRY S. DAVIS, Defendant. } 1713. Eq. Doc. 9.

Henry E. Davis, the trustee herein appointed by the Court in the above entitled cause to make sale of squares numbered 910 and 911 in the City of Washington and District of Columbia, having reported sales by him of the said premises as follows, to wit: Lots 2 and 3, square 910, to Celia Chappel, for $884 17; lots 1 and 3, square 911, to Thomas Potee, for $4860.50; and lots 1, square 910, and 2, 4, 5, 6, 7, 8, 9 and 10, square 911, to Henry S. Davis, for $5416 90—the aggregate amount of said sales being $10,661.57;

It is, this 6th day of July, A. D. 1885, ordered that the said sales be ratified and confirmed, unless cause to the contrary be shown on or before the 6th day of August, A. D. 1885.

Provided, a copy of this order be published once a week for three successive weeks, in the Washington Law Reporter before the said 6th day of August, A. D. 1885.

A. B. HAGNER.

A true copy. Test: 28 R. J. MEIGS, Clerk.

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Legal Notices.

THIS IS TO GIVE NOTICE.
That the subscribers, of the District of Columbia have obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration, c. t. a., on the personal estate of Gurden Snowden, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscribers on or before the 30th day of June next; they may otherwise by law be excluded from all benefit of the said estate,
Given under oer hands this 30th day of June, 1885.
JAMES H. SMITH,
WILLIAM B. WEBB,
28 Administrators c. ta. a.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c.t.a. on the personal estate of John E. Thompson, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 3rd day of July next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 3d day of July, 1885.
MARY E. THOMPSON,
28 Administratrix c. t. a.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Sarah E. Wilson, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of July next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 6th day of July, 1885.
THEODORE D. WILSON,
D. J. PARTELLO, Solicitor. 28 Executor.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Samuel, alias Samuel H., Hill, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of July next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 6th day of July, 1885
GEORGE E. JOHNSON,
28 Executor.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of James S. Magee, late of the District of Columbia, deceased.
All persons having claims again the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 26th day of June next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 26th day of June, 1885.
28 SUSAN ST. C. MAGEE,
N CARUSI, Solicitor. Administratrix

THIS IS TO GIVE NOTICE.
That the subscribers, of the District of Columbia, and Princeton, N J., respectively, have obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testmentary on the personal estate of William McLean, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscribers on or before the 6th day of July next; they may otherwise by law be excluded from all benefit of the said estate.
Given under our hands this 6th day of July, 1885.
SAM'L S. SHEDD.
WILLIAM H. ROBERTS.
JAS. G. PAYNE, Solicitor. 28

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 10th, 1885.
In the matter of the Probate of the Will of Ira Croson, late of the District of Columbia, deceased.
Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by Charles Allen and Henry L. Rose.
All persons interested are hereby notified to appear in this court on Friday, the 31st day of July, next, at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day
By the Court. A B HAGNER, Justice.
Test: 28 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business. July 10th, 1885.
In the case of Woodbury Blair, Administrator of Robert E. Boston, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 31st day of July, A. D. 1885, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
Test: 28 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 8th day of July, 1885.
SIDNEY A. GILBERY
v. } No. 9517. Eq. Doc. 25
JOHN F. GILBERY.
Bill for Divorce for desertion.
On motion of the plaintiff, by Messrs. A B. Webb and G. A. Kuhn, her solicitors, it is ordered that the defendant, John F. Gilbery, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.
By the Court. A. B. HAGNER, Justice.
True copy. Test: 28* R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 8th day of July, 1885.
WILLIAM E. TAYLOR
v. } No. 9450. Eq Doc. 24.
AGNES E TAYLOR.
Bill for Divorce upon the ground of desertion.
On motion of the complainant, by Mr E. A. Newman, his solicitor, it is ordered that the defendant, Agnes E. Taylor, cause her appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.
By the Court. A. B. HAGNER, Justice.
True copy. Test: 28 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 8th day of July, 1885.
CHARLES A. ELDREDGE
v. } No. 26,265. Law.
ELIJAH K. BRUCE.
On motion of the plaintiff, by Mr. R. B. Lewis, his attorney, it is ordered that the defendant, Elijah K. Bruce, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.
By the Court. W. S COX, Justice
True copy. Test: 28 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Anna Pinion, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of July next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 10th day of July, 1885.
JOHN H. KING,
RUTLEDGE WILLSON, Solicitor. 28 Executor.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 27th day of June, 1885.

FRANKLIN SCHOYER v. CORA SCHOYER. } No. . Equity Docket.

On motion of the plaintiff, by Mr. H. T. Taggart, his solicitor, it is ordered that the defendant, Cora Schoyer, cause her appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.
True copy. Test: 26 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Samuel S. A. H. Marks, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 26th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 26th day of June, 1885.

ARKANSAS G. MARKS,
26 LEONORA MARKS,
HENRY WISE GARNETT, Solicitor. Administratrices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Mary H. Dorsey, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 26th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of June, 1885.

WORTHINGTON DORSEY,
WM. F. MATTINGLY, Solicitor. 26 Executor.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Angelica Simpson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of June, 1885.

MARGARET K. SIMPSON,
W. B. LORD, Solicitor. 26 Executrix.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, LettersTestamentary on the personal estate of Robert H. Graham, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 27th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of June, 1885.

ANN S. GRAHAM,
WM. G. HENDERSON, Solicitor. 26 Executrix.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of John Travers, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 11th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of June, 1885.

P. B. DUNN, Executor.
FILLMORE BEALL, Solicitor. 26

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Holding a Special Term for Orphans' Court Business. June 30th, 1885.

In the case of Andrew B. Graham, Adm'r c. t. a. of Thomas Evans, deceased, the Adm'r c. t a. aforesaid has, with the approval of the Court appointed Friday, the 24th day of July, A. D 1885, at 11 o'clock, a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Adm'r c t.a will take the benefit of the law against them Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 27 H. J RAMSDELL, Register of Wills.
F. E. ALEXANDER, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 3d, 1885.

In the matter of the Estate of Charles Clark, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Caroline Case, who prays that letters of administration may be granted to John J. Wilmarth.

All persons interested are hereby notified to appear in this court on Friday the 24th day of July next at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 27 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

THEO. A. MILLS and others v. SUSAN E. MILLS and others. } No. 9042. Eq. Doc. 24.

It is, this 30th day of June, 1885, ordered, that the sales made and reported by T. A. Lambert, C. C. Cole and S. T. Thomas, trustees for the sale of the real estate of Clark Mills, deceased, being sales of lots numbered from one to twelve, both inclusive, of the second subdivision of said real estate made by said trustees, and being the whole of the real estate directed to be sold in this cause, be ratified and confirmed, unless cause to the contrary thereof be shown on or before the 30th day of July, 1885.

Provided, a copy of this order be published in the Washington Law Reporter once in each week for three successive weeks before said date

The aggregate of said sales, as stated in said report, is $12,940 00.

W. S. COX, Justice.
A true copy. Test: 27 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Mary Buckley, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 29th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of June, 1885.

27 PHEBE E LIVERMORE.
FRANKLIN H. MACKEY, Solicitor. Administratrix.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Sarah Otterback, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of June, 1885.

HENRY B. OTTERBACK,
W. WILLOUGHBY, Solicitor. 27 Administrator.

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Washington Law Reporter

WASHINGTON - - - - - - - - July 25, 1885.

GEORGE B. CORKHILL - - - EDITOR

WE congratulate the citizens of the District upon the selection by the President of Mr. Wm. B. Webb as Commissioner. No man stands higher in the estimation of his professional brethren and of his fellow-citizens of the District generally.

WE devote a large space this week of the LAW REPORTER to the publication of the opinion of Mr. Justice Hagner, of the Supreme Court of the District of Columbia, in the case of Hewett et al. v. The Western Union Telegraph Company and the District of Columbia.

The bill in this case which was filed by certain persons, property owners of lots abutting on Seventh street, in the city of Washington, and who sue as well for themselves as for all others on that street similarly situated, charges that the Western Union Telegraph Company, under the assumed authority of the District of Columbia, is about to erect telegraph poles on that street in front of their abutting lots; that such erection of poles, under the circumstances stated by them, will constitute a nuisance. The particular details that will constitute a nuisance are given, and an injunction asked against both the District and the telegraph company.

The important question is argued so fully and thoroughly by Judge Hagner as to the right of telegraph companies to erect telegraph poles along the streets of a city. The opinion will commend itself as almost unanswerable in its conclusions, and will prove of great interest to the profession.

Court of Claims.

We have received a copy of the Revised Rules of the Court of Claims, adopted June 1, 1885, with the statutes relating to this court, including the latest act, giving jurisdiction of the French Spoliation claims. The rules and statutes are not only reprinted as adopted, but they are carefully edited with marginal notes and references to decisions, which save parties having questions to investigate, much trouble, care and labor. We know of no court which has ever before issued its rules and statutes in such admirable and convenient form, and we commend it to the attention and consideration of all other courts as an example to adopt and follow.

At the same time the court has reprinted a second edition with additions and notes of the history, jurisdiction and practice of the Court of Claims, by William A. Richardson, LL. D., Chief Justice of the court. This is a useful and instructive publication which may be read with profit by every statesman in and out of lawyers who desire to learn something about claims against the government, by every lawyer, aud by any historian who watches the progress of civilization.

Both of these publications may be had on application to the clerk of the Court of Claims, Washington, D. C., without charge.

THE enemies of capital punishment in Switzerland have just achieved what they call a "victory of progress." They have succeeded in preserving alive a wretch who tortured and killed his daughter. As there have been no executions in Switzerland for several years, no one knew how to do the job, and no guillotine could be procured, of the only two available one would not work and the other was in use as a sausage machine. So the brute was reprieved, and "civilization triumphed."

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Supreme Court District of Columbia

HEWETT ET AL.

vs.

WESTERN UNION TELEGRAPH COMPANY AND THE DISTRICT OF COLUMBIA.

EQUITY. No. 9451.—SPECIAL TERM.

1. Several owners of lots abutting upon the line of a street, may unite in a bill for an injunction to prevent the erection of a common nuisance upon the street, where it appears that they would all be affected in the same way by the act complained of, and may sue as well for themselves as for other property holders similarly situated.
2. It is not incumbent upon a court of chancery to postpone an injunction to restrain a nuisance until the right of the complainants and the existence of the nuisance shall be ascertained at law.
3. The averments of the bill in this cause sufficiently set forth a case of threatened irreparable mischief, within the legal signification of the term, and of a special and peculiar injury to the complainants.
4. The existence of a legislative license to a private company to occupy a public street for its particular purposes, cannot exonerate the company from liability to a citizen who has sustained an injury from the exercise of the franchise.
5. A telegraph company can only justify its claim to occupy any portion of the public streets for the construction of its lines, by showing a competent legislative grant authorizing such occupation.
6. The joint resolution of March 3, 1863, which declares that the location and construction of lines of telegraph within the District of Columbia "shall not be carried into effect without the written approval of the Secretary of the Interior and Commissioner of Public Buildings and Grounds first obtained, as to the proper route and course of said line to be followed within the District of Columbia," is still in force; and is not repealed by the General Telegraph Act of May 24, 1866, nor by the Revised Statutes of the District of Columbia.
7. The "permit" given by the Commissioners of the District of Columbia to the defendant telegraph company to erect their poles along Seventh street is powerless to confer such a privilege, no authority having been conferred upon the District government by Congress to create such a servitude upon the streets of the city.
8. The occupation of the streets of a city by telegraph poles is not an ordinary servitude imposed upon the highway, like the laying of tramways of stone or iron or the erection of lampposts, which are in aid of the easement connected with its surface, but is an extraordinary and permanent appropriation of a portion of the surface, for purposes in no respect connected with its enjoyment by the public and in derogation of the common right.

Messrs. W. A. COOK, H. E. DAVIS, WARREN C. STONE and OSCAR NAUCK for complainants.

Mr. J. HUBLEY ASHTON for the Telegraph Company.

Mr. A. G. RIDDLE for the District of Columbia.

Opinion by HAGNER, J.

The bill in this case is filed by five persons who describe themselves as property owners of lots abutting on Seventh street, and who claim to sue as well for themselves as for all others on that street similarly situated; and with many circumstances of detail it charges that the Western Union Telegraph Company, under the assumed authority of the District of Columbia, is about to erect telegraph poles on that street in front of their abutting lots; that such erection of poles, under the circumstances stated by them, will constitute a nuisance; and they set forth the various particulars in which they will be injured by the proposed action of the company, and ask that an injunction may be granted to restrain this contemplated act of the company; and also that an injunction may go against the District of Columbia. I shall refer hereafter to the special allegations of the bill.

The rule was issued. The defendant, the District of Columbia, interposed a demurrer to the bill. The defendant, the Telegraph Company, has made no answer, but by way of showing cause, has filed an affidavit of its Washington manager.

The case has been argued in the most thorough manner, and I have derived great assistance from the presentation of the numerous questions by the attorneys representing the different parties in interest.

I shall notice in order the different objections which have been made to the relief asked.

First. It is insisted by the company that the bill is faulty, because it is filed by several property holders who unite and sue for themselves as well as for all others similarly situated, and that such union of plaintiffs is a misjoinder.

However correct this point may have been in England and even in this country, at one time, it is now well settled that the objection is no longer tenable here. The books of authority on equity pleadings recognize the propriety of the joinder of several lot owners in a bill to enjoin a nuisance, where they are all affected in the same way by the act complained of. Story's Equity Pleading (9th ed.), sec. 286 *b.* note, sec. 539; 2 High on Inj., sec. 793.

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The case of Hudson *vs.* Madison, 12 Sim., 352, was much relied on in support of the correctness of this position in England; but the doctrine was entirely disregarded in the late case of Vernon's Trustees et al. *vs.* Vestry of St. James Parish, 16th L. R. (Chancery Division), decided in 1879, This was an action by the trustees under the will of one Pollen, and other owners of property in the Old Burlington Mews, to restrain the Vestry of the Parish of St. James from erecting a public urinal. Pollen, who was seized in fee of the Mews and of some of the houses around it, devised the property to trustees, whose successors were among the plaintiffs in this action. The other plaintiffs were Lewis and Allenby, owners in fee of land abutting on the Mews, and also holding under lease from Pollen's trustees; a Mr. Bingley, who held under Pollen's trustees, and whose back building abutted on the Mews; another person who had a wine cellar in the Mews, and a tailor, the back door of whose shop opened on the Mews; making together as many plaintiffs as we have here.

The court granted the injunction after the fullest argument, and without a suggestion of misjoinder.

This practice has been followed without objection in this jurisdiction, and is substantially that which was adopted in the recent case of Miller *vs.* Mayor of New York, 109 U. S.

This objection is overruled.

Second. It has been insisted with great earnestness that it is the duty of the court to withhold an injunction, in any view of this case, until the right of the plaintiffs and the existence of the alleged nuisance has been established at law by a verdict upon an indictment at the suit of the Government, or in an action for damages.

Some of the cases cited in support of this contention lay down the rule as applicable to all nuisances, and others limit it to cases of private nuisances. But if constant practice to the contrary in the equity courts at the present day is at all to be respected, no such rule can now be held as applicable where a bill is filed to restrain a common nuisance.

The authority of a chancery court to transmit an issue to a jury, where it considers it proper to do so, may be exercised in cases of nuisances, as in other cases; but there is no rule which requires it to abdicate its own judgment in an application to enjoin a nuisance, and ask the guidance of a jury before it shall act. It would be a mockery of justice for a Chancellor, where he believes a proper case for an injunction is presented, to turn the plaintiffs over to the vicissitudes and expenses of an action at law, with the risk of new trials and appeals and reversals; involving delays, it may be for years, while the property is being ruined or its comfortable enjoyment destroyed; instead of arresting the evil at once.

But for the earnestness with which this position was urged by learned counsel, I should content myself with stating simply my conclusions on the subject; but the thoroughness and ability of the argument seem to call for a more extended statement.

In 2d Story's Eq. Jur., § 924, the plenary jurisdiction of courts of equity to interpose in cases of nuisances is thoroughly explained in terms inconsistent with the claim that its great powers are to wait upon the whims and delays of a jury:

"The ground of jurisdiction of courts of equity in cases of purpresture, as well as of public nuisances, undoubtedly is their ability to give a more complete and perfect remedy than is attainable at law, in order to prevent irreparable mischiefs, and also to suppress oppressive and vexatious litigations. In the first place, they can interpose where the courts of law cannot, to restrain and prevent such nuisances which are threatened, or are in progress, as well as to abate those already existing. In the next place, by a perpetual injunction the remedy is made complete through all future time, whereas an information or indictment at the common law can only dispose of the present nuisance. In the next place, the remedial justice in equity may be prompt and immediate, before irreparable injury is done; whereas, at law nothing can be done except after a trial and the award of judgment. In the next place, a court of equity will not only interfere upon the information of the Attorney General, but also upon the application of private parties directly affected by the nuisance; whereas, at law in many cases

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the remedy is, or may be, solely through the Attorney General."

This jurisdiction is said by Justice Story to be distinctly traced back to the reign of Queen Elizabeth. 2 Story's Equity, sec. 921. But the right of the chancellor to interfere to suppress and punish nuisances was expressly given by the act of 12 Richard II, 1388, two hundred years before the reign referred to.

As this is a matter not without interest, I will refer to the portions of the statute, to which my attention was directed by a citation in the learned work of the late distinguished Conway Robinson, "English Institutes," 683, note. I may be pardoned for pausing to notice the light cast upon the general subject of nuisances by this ancient statute.

The selfish citizen who insists upon pursuing an offensive business in the midst of a city, in contempt of the expostulations and regardless of the comfort of his neighbors, is sometimes encouraged to evade the well-settled law of nuisances, by the claim that its provisions have no application to cities, but only to villages or outlying country districts. Nothing could be more precisely to the reverse of the fact, for the law of nuisance is pre-eminently urban in its application; and this statute of Richard II was chiefly intended to apply to cities. According to its title, it was passed for, "the punishment of them which cause corruption near a city or great town to corrupt the air;" and throughout the statute the localities of the designated nuisances are said to be "within, about and nigh unto divers cities, boroughs and towns of the realm, and the suburbs of them;" and proclamation is to be made, "as well in the city of London, as in the other cities, boroughs and towns through the realm of England," that persons offending shall remove such nuisances by the feast of St. Michael next ensuing, under forfeit of £20 to the king; and "the mayors and bailiffs of every such city, borough or town shall compel the same to be done, upon like pain;" "and, moreover, proclamation shall be made as well in the city of London, as in other cities, boroughs and towns as aforesaid, that none, of what condition soever he be, cause to be cast or thrown, from henceforth, any such annoyances, garbage," &c., &c.

This statute proceeds to recognize the jurisdiction of the chancery with respect to the existing nuisances referred to, in these words: "And, if any one feel himself grieved that it be not done in the manner aforesaid, and will thereupon complain him to the chancellor, after the said feast of Saint Michael's, he shall have a writ to make him of whom he will complain to come into the chancery, there to show why the said penalty should not be levied of him, and if he cannot duly excuse himself, the said penalty shall be levied on him."

Again, with respect to nuisances in the future, it is declared, that if any shall cause such annoyances so to be cast or thrown, &c., "he shall be called by writ before the chancellor, at his suit that will complain, and if he be found guilty he shall be punished at the discretion of the chancellor."

It is undoubtedly the course of the equity courts at this day to decide the question of nuisance for themselves, if a reasonably complete case is presented.

Thus in 13th Howard, 562, the Wheeling Bridge Case, the Supreme Court, upon greatly controverted facts, decided to issue the injunction without reference to a jury.

In 2d Black, 495, Railroad Company *vs.* Ward, the court declares that, "in a court of chancery the court ascertains the fact of the nuisance." There was no reference to a jury in the case of Miller *vs.* Mayor of New York, before referred to, 109 U. S., 394, and the Supreme Court, in a recent case, has held it unnecessary to await such a trial even where the question of title to the property affected by the alleged mischief was disputed. Earhardt *vs.* Boare, 113 U. S., 537.

The action of the court in the case in 30 Beavan, 287, referred to by the defendant on this point is quite consistent with this view of the subject.

The action there was brought by the Attorney General, *ex rel.* Baron Rothschild, and also by Baron Rothschild, in his own right, as plaintiff, *vs.* The United Kingdom Electric Telegraph Company and the Clerk of the Commissioners of the Metropolitan Turnpike Roads. When the

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court came to ascertain what was to be enjoined, it appeared that what the company sought to do was not to set up poles, but to dig a trench in which they proposed to place troughs underneath the surface of a county road in which to put their wires. The company was proceeding without any parliamentary grant, although it had the assent of the guardians of the highway. They were constructing their line of communications along the public highway opposite Acton, a property of which Baron Rothschild was the owner in fee, and had commenced by erecting posts along the footpath, but had removed them and proposed to place their wires, as I have said, in troughs underneath the surface of the road. This application to enjoin them from laying wires under the ground shows what was the practice of the companies in England as far back as 1861, even on county roads. The Master of the Rolls said:

"With respect to the private property of the plaintiff, the evidence does not show that it is injuriously affected. Assume the fact to be as argued, that the soil in the road belongs to the plaintiff, there is nothing at present which affects him with any injury whatever. There might have been originally some inconvenience produced by the erection of the posts in December, 1860, but these have been taken down and nothing has been done except that some pipes or mains have been placed in the soil underneath the public highway. I do not, at this moment, intend to express any opinion whether it is an invasion of his private rights or not, but I am clear that there is no irreparable injury to him which requires the interposition of this court prior to the hearing of the cause. Whether the court will then do anything is another matter; but this court only interferes by interlocutory injunction to protect property from injury about to be done to it."

The court properly refused the injunction because no case was made by the bill, and it went over for further hearing; but not because the chancery court was not competent to decide upon the merits of the complaint. I can find no further reference to the case in the reports, but in 9th Cox's Criminal Cases, 194, where an indictment at the suit of the Queen was found against this company for obstructing the highway by erecting posts along it, the jury found the defendant guilty because it did not appear that the company had any authority from Parliament, although it had the authority of the guardians of the road. This case shows the sacredness with which the English courts preserve the rights of private property. Here was a wide country road along which the company undertook to construct its lines; and the place where it proposed to put its posts was between the footpath and the wagon way, which, in many places, was covered by briers and so broken by ravines that it could not be used by travelers for any purpose whatever.

I refer again to the case in 16th Law Reports, Chancery Division, page 449, where the different owners of property abutting on the Mews brought an action to prevent the vestry from maintaining a nuisance. The averment was denied, and the case much contested, but the injunction was granted, without any suggestion of a reference to a jury; the court holding that the structure constituted a nuisance. I will read what Mr. Justice Lush said from page 471, as it embodies an illustration which is applicable to the subject before us:

"What other limitation, if any, the action is to receive, we may, I think, be better able to decide if we consider what was the state of the common law upon this subject before the act passed. It was well established at common law that an indictment would lay against any person or body, whether a vestry, or the trustees of a turnpike road or a private individual, who obstructed any part of the public highway; and it was not a sufficient defence that the obstruction was for a purpose more beneficial to the public than the use of that part of the road would have been. You cannot divert the road so as to get rid of an inconvenient angle. You cannot put anything whatever upon the public highway, and justify it by saying 'it does far more good to the public than it does harm.' A telegraph company could not lay a line of posts along a public highway without the authority of Parliament. I remember, years ago, a very sin-

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gular case of that kind in which I myself was engaged. A telegraph company, while its act was in the House, began, in anticipation of its passage, to lay down its wires; and erected, with the consent of the trustees of a turnpike road, a line of telegraph posts. Another company indicted them for the nuisance and they were found guilty, and judgment would have been passed requiring them to take up the posts and abate the nuisance; but, fortunately for them, on the very day before the time came for moving for judgment, the statute received the royal assent; so that what they had done was authorized. I mention that by way of illustration to show how strict the law was against the occupying by any permanent structure any part of that which had been dedicated to the public traffic, however beneficial to the public such structure might be, and whatever collateral advantages might have accrued to the public from it."

To the same effect is a case in 9th Law Reporter, Chancery Appeals, page 221, Goodson *vs.* Richardson.

I conceive that there is no obligation on the court to send this case to a jury to ascertain the question of nuisance, but that it is my duty to decide the point for myself; and I shall proceed to do so.

Third. Have the plaintiffs presented a proper case for the preliminary injunction as the facts now appear before the court? The bill is sworn to by the five complainants, and its averments of fact, so far as the District is concerned, are admitted by demurrer. The defendant company has presented no other defence than an affidavit of its Washington manager, accompanied by copies of its acceptance of the provisions of the act of 1866, ch. 230, of its application to the Commissioners for the permit, and of the permit itself. The case cited from Blatchford's Reports shows that this is an admissible mode of showing cause, although it is unusual in this jurisdiction. But the same decision shows that the defendant who adopts this mode of compliance with the rule to show cause, occupies a less favorable position than it would have done if it had answered in the usual form under oath, and had fortified its statements by affidavits of others. The affidavit simply contains the statement and the copies of which I have spoken, and then proceeds to explain the intentions of the company. But not in a solitary particular does it contradict either of the important averments of impending injury set forth in this bill; so that, even accepting the affidavit of Mr. Marean as the equivalent of an answer, the allegations of fact in the bill are practically uncontradicted.

The intervention of the court is claimed upon the ground of threatened irreparable injury to the property rights of the complainant, which, it is alleged, is about to be inflicted by the defendant company without legal authority and without tender of compensation or possibility of fair remuneration at law, and it is charged that the unlawful acts complained of will constitute a continual and constantly recurring injury and nuisance to the complainants and to all others of their neighbors similarly situated, which, if they could be adequately redressed at law, would occasion a multiplicity of suits by the various persons aggrieved for each repeated wrong. Whether they are entitled to the interposition of chancery upon these grounds depends upon the sufficiency of the facts that can be regarded as established at this stage of the case. Of course the complainants cannot content themselves with the bare assertion that they are threatened with irreparable injury, but they must set forth the facts upon which they base the averment, that the court may be able to judge of the justice of their conclusions. The definition of the phrase given by Mr. Wood in his work on Nuisances, section 770, is in these words:

"By irreparable injury is meant not such injury as is beyond the possibility of repair, or beyond compensation in damages; nor necessarily great injury or great damage; but that species of injury, whether great or small, that ought not to be submitted to on the one hand, or inflicted on the other; and which, because it is so large on the one hand or so small on the other, is of such constant and frequent occurrence that no fair or reasonable redress can be had therefor in a court of law."

And before private parties can obtain injunction it must also appear that they are suffering some special and peculiar in-

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jury differing in kind or degree from that sustained by the body of the public from the nuisance complained of.

The averments of the bill set forth the grievances of the complainants as follows:

"That the District authorities have no power to authorise the defendant company to occupy the street with its poles and wires; but

"That notwithstanding their want of power as aforesaid, the said District of Columbia, by its Commissioners, have entered into an arrangement with said Western Union Telegraph Company for the construction on parts of said Seventh street, as well as on other streets, of large, thick and high wooden poles and various wires and other things to be used in the reception and transmission of telegraphic communications, and have issued to said company a permit dated May 11, 1885, which contains, among other things, the following, viz.:

'Also to erect a line of poles on the east side of Seventh street from New York avenue to Boundary, along Boundary from Seventh to Eighth street, along Eighth street extended to Grant avenue to Ninth street extended.'

"That acting according to said arrangement and permit, said company has placed a large number of said poles along said line of street and others, and employed a large number of workmen to immediately dig up parts of said streets and place said poles and wires thereon without any proper or legal right to do so; and that no compensation has been made the plaintiffs or either of them for or on account of the injury which will arise and be sustained by them and others similarly situated as respects their real estate by the construction of said poles and attaching to them wires as aforesaid, nor tendered them or any of them by either of said defendants.

"That Seventh street is one of the oldest and most active business streets of said city, is narrow, and has already placed on it double tracks of the Washington and Georgetown Railroad Company, gas lamps, &c., and should be kept free from any and all other obstructions and structures."

"That the said telegraph poles proposed to be erected as aforesaid in the said street, now lie thereon to the great obstruction of travel, drainage and cleanliness, and will, if erected, not only disfigure the said street, but will be a source of constant injury and liable to fall in the said street and upon and against the premises of the complainants, to their great damage and the risk of their lives; that the said poles, if erected, will seriously and materially interfere with the use of the portion of the said street and the ordinary travel thereon, and will obstruct and impede the ordinary use and enjoyment by the complainants of their said several premises and the said portion of the said street, both as a highway and for other purposes, for which the same, as contiguous to their said several respective premises, is now properly and lawfully used by the complainants, and further, will impede and interfere with the complainants, their families and their customers, in business, in access and approach to and departure from the said tenements and premises; that the said wires proposed to be strung on the said poles will, if so strung, be liable to be blown down and to fall upon the said portion of the said street, to the great peril of the complainants, and during the high winds which prevail in the said city, will create a loud and hissing and singing noise, to the disturbance of the sleep and quiet of the complainants residing in their vicinity; that the said wires will, if erected, seriously and materially increase the danger of destruction of the said tenements and buildings by fire, by their liability to attract lightning, and by their bringing into proximity to the said tenements and buildings the action of electricity; and that they will also seriously hinder, impede and obstruct the operations of the fire department of the said city in extinguishing any fire or fires that may occur in and upon the said tenements and buildings, and will interfere with access to and escape from the same in case of necessity on account of such fire or fires; by all which means the erection of the said poles and wires will cause and occasion to the complainants damage peculiar to them as the owners and occupiers of tenements, buildings and premises abutting upon the said portion of the said narrow, busy and already obstructed street; will interfere with the outlook from their said several

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tenements and buildings; will occasion to the complainants a constantly recurring grievance; will interfere with the reasonable use and enjoyment of their premises, and will obstruct and interfere with the use and enjoyment of said Seventh street as aforesaid by the public generally, and by all persons similarly situated with the complainants, and will cause them irreparable injury and mischief for which no fair, reasonable or adequate redress or compensation could be had at law."

And they allege in the 18th paragraph:

"That the line of said street is so extended, and so many separate and individual interests involved, that it would require a multiplicity of suits to assail and abate the evils and nuisances aforesaid."

The bill also avers, that even if there were any lawful authority on the part of the defendants to erect these poles, it would be hurtful and unnecessary to do so, since it is competent for them to obtain the same end by underground wires.

Many of these objections have suggested themselves to all observant persons, and I do not think the bill states them with unreasonable emphasis. That the company feels their force appears from Marean's letter to the District Commissioners, in which he uses the expression:

"These poles occupy streets where they are most objectionable."

At this stage of the case these averments stand as practically admitted, and if it should appear to the court that the company purposes to inflict these injuries, without legal authority, I think, without doubt, a sufficient case is presented by the bill of a special and peculiar injury sustained in these respects by the complainants, differing in kind and degree from that suffered by the body of the public. It is clear it would be extremely difficult to estimate in dollars and cents the extent of the injury sustained by the complainants from these alleged grievances; as in the case of the incessant ringing of a bell at unusual hours, or from a foul smell; and yet all will admit that such nuisances may be unendurable. It is equally clear that a recovery at law by each lot owner would only comprehend his individual injury up to the time of the suit, and that an endless multiplicity of suits would result so long as the nuisance continued. Such grievances as must be considered as established to exist here, would certainly "impair the just enjoyment of the property in future," in the language of Judge Story. Not that the houses would be destroyed or totally ruined by the erection of the poles, but if the charges are true, these acts certainly go to destroy their value in the character in which the properties are enjoyed (White *vs.* Flannigan *et al.*, 1st Md., 525); and such injury may properly be described as irreparable.

Fourth. I am next to consider whether the contention of the complainants is well founded that this company is without legal authority to enter upon this street and construct its line in the manner proposed.

The company justifies its acts under a special power given by Congress which, as it asserts, authorizes to the full all they propose to do. But admitting the binding force of the legislation relied on (which is the point I now purpose to discuss), I cannot admit that its effect could be so extensive as as to deny to a citizen injured by the exercise of the franchise all redress in the courts. However effective such a plea may be in a prosecution by the sovereign that bestowed the grant, it should not and could not avail where a private person claims reparation for an obvious wrong inflicted by one or more citizens whether acting individually or under a corporate name, which they have adopted for their private benefit, in exercising the privilege they have been fortunate enough to obtain from the legislature.

This court, in District of Columbia *vs.* Baltimore & Potomac R. R. Co., 1 Mackey, 326, declared that the legislative permission to make an extraordinary use of the highway, in derogation of the common right, by digging a tunnel, exonerated the company from an action by the municipality, as a trespasser *ab initio*, for the disturbance of the bed of the street; but that the legislature did not thereby "waive or impair the right of action against the company in respect of actual injury sustained by a citizen from the excavation of the street. Nor could it agree that the citi-

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zen might receive such injury with impunity, and be powerless to obtain redress by appeal to the courts, provided only the company could show that it availed itself of the unusual and hazardous privilege, without actual negligence."

Mr. Justice Field, in Baltimore & Potomac Railroad Company *vs.* Fifth Baptist Church, 108 U. S., used this language:

"It is no answer to the action of the plaintiff, that the railroad company was authorized by Congress to bring its track within the limits of the city of Washington, and to construct such works as were necessary and expedient for the completion and maintenance of its road, and that the engine-house and repair shop in question were thus necessary and expedient; that they are skillfully constructed; that the chimneys of the engine house are higher than required by the building regulations of the city, and that as little smoke and noise are caused as the nature of the business in them will permit.

"In the first place, the authority of the company to construct such works as it might deem necessary and expedient for the completion and maintenance of its road, did not authorize it to place them wherever it might think proper in the city, without reference to the property and rights of others. As well might it be contended that the act permitted it to place them immediately in front of the President's House or of the Capitol, or in the most densely populated locality. Indeed the corporation does assert a right to place its works upon property it may acquire anywhere in the city.

"Whatever the extent of the authority conferred, it was accompanied with this implied qualification, that the works should not be so placed, as by their use, to unreasonably interfere with and disturb the peaceful and comfortable enjoyment of others in their property. Grants of privileges or powers to corporate bodies, like those in question, confer no license to use them in disregard of the private rights of others, and with immunity for their invasion. The great principle of the common law, which is equally the teaching of Christian morality, so to use one's property as not to injure others, forbids any other application or use of the rights and powers conferred. * * *

"It admits indeed of grave doubt whether Congress could authorize the company to occupy and use any premises within the city limits, in a way which would subject others to physical discomfort and annoyance in the quiet use and enjoyment of their property, and at the same time exempt the company from the liability to suit for damages or compensation, to which individuals acting without such authority would be subject under like circumstances."

I see no reason why the citizens should be obliged to submit in silence to the disfigurement and injury to their property from the erection before it of these huge poles, which have been tripled in size and height since they were first introduced, looking like giant gibbets, or the unsightly remnants of a burnt forest; to the risk to life or limb from their falling (a fatal instance of which occurred recently in this city), and from the breaking and fall of the wires from wind or sleet; to the injury to the shade trees before the doors and along the streets and avenues—the glory of our beautiful city; to constant annoyance from the startling apparition of men climbing the poles to great heights to repair the wires—compelling the passers-by to leave the usual track to avoid the disagreeable spectacle, as well as the actual danger; to the increased risks from fires arising from the use of the electric wires, and the obstacle their presence occasions to the prompt extinguishment of conflagrations and to the escape of the occupants of burning houses; and to the numerous other annoyances and troubles they occasion—most of which might be obviated or greatly lessened if the wires were placed under ground, as they may be, simply because there may be shown a legislative grant, authorizing the company to erect the poles along the streets.

Unless the telegraph company can justify its claim to erect these poles under a legislative grant, direct or derivative, its acts of interference with the streets by encumbering them with the poles lying along the curbstones, the displacing of the paving and digging holes in the bed of the streets

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or in the pavements, the planting of the poles and stringing the overhead wires upon them, would each and all be an illegal intrusion upon the public, which would constitute the company a trespasser and its acts a nuisance.

The streets of a city are dedicated to the general use of the public, which is entitled to free passage along every part of them not in actual use by some other passenger. Hence it is no valid justification for such intrusion that a sufficient way has been left for the public to pass. The public is not to be compelled to pick its way between impediments which a person or company may see fit to erect. Nor is it any defence that the public inconvenience would be more than balanced by the public benefit that may be realized from the structure. The citizens are entitled to all the space on the sides of the traveled highways for the purpose of light and air, and no one can withdraw any portion of it from public use with impunity.

These are familiar principles, and the cases are very numerous where they have been upheld from the most ancient times. Rex *vs.* Wright, 3 B. & A., 681. Wood on Nuisances (Highways), sec. 274.

In 2d Dillon on Municipal Corporations, sec. 698, they are held to be applicable to the case of telegraph poles erected on a highway without legislative authority. In 97 Mass., 555, Commonwealth *vs.* The City of Boston, the court considered the general statute which authorized the erection of poles under direction of the municipality by companies incorporated by the State. The city, under this act, granted license to a New York company, prescribing the route, size, kind and location of the poles and wires. The court held that the act should be construed strictly, and, as the company was not incorporated by Massachusetts, the poles were declared a nuisance.

And so in 9th Cox's Reports, the case to which I have referred, Reg. *vs.* United Kingdom Electric Telegraph Company, 174, where the poles were erected under the permission of the guardians of the highways, but without a parliamentary grant, they were held to be an illegal intrusion on the public, and the company was convicted as maintaining a nuisance. It is enough that the posts stand in the way of those who may choose to go where they stand. In 46 Me., 483, Dickey *vs.* Telegraph Company, Mrs. Dickey was a passenger in a stage coach which was running between Belfast and Northport. The stage driver, on arriving at the latter place, turned off from the usual traveled portion of the road, and came in contact with a telegraph wire which was hanging too low and which caught the upper part of the stage, causing it to turn over and the lady was injured. The telegraph company was held liable although the stage was out of the beaten road, because the traveler had the right to go over all portions of it, however wide, and whether it was kept in order by the highway commissioners or no.

And it is to be observed that there are special reasons why these principles should apply to the streets of this District. The legislation of Congress is explicitly directed against the occupation of any portion of the public streets without its authority. Sections 222, 6, 7, 8, 9 and 10 Rev. Stats. D. C.

The alleged vastness and utility of the work in which the defendant company is engaged in no degree exonerates it from the operation of these principles. It is an aggregation of private citizens who have assumed a corporate name for their own personal advantage and who are prosecuting their great work for the purposes of private gain, as a legitimate commercial adventure. So long as they find it profitable they will pursue it and no longer, and will discontinue the enterprise when it ceases to pay and turn its energies into new channels. If, for example, they should find it to their advantage to use their plant for the purposes of telephone service, the change would be made without any special consideration of the alleged advantages to the Government from the present cheap telegraphy. It has not ceased to be a private enterprise because it may serve the Government efficiently.

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Is the act of July 24th, 1866, a sufficient authority for the proposed action of the company?

That act, entitled, "An act to aid in the construction of telegraph lines, and to secure to the Government the use of the same for postal, military and other purposes," declares in

Sec. 1. "That any telegraph company now organized, or which may hereafter be organized, under the laws of any State in this Union, shall have the right to construct, maintain and operate lines of telegraph through and over any portion of the public domain of the United States, over and along any of the military or post roads of the United States which have been made, or may hereafter be declared such by act of Congress, and over, under, or across the navigable streams or waters of the United States: *Provided*, That such lines of telegraph shall be so constructed and maintained as not to obstruct the navigation of such streams and waters, or interfere with the ordinary travel on such military or post roads." * *

Sec. 2. "Telegraphic communications between the several departments of the Government of the United States, and their officers and agents, shall, in their transmission over the lines of any of said companies, have priority over all other business, and shall be sent at rates to be annually fixed by the Postmaster General."

The act provides further, that the rights and privileges thereby granted shall not be transferred to any other company; and that after five years, the United States may purchase the telegraph lines, property, &c., of said companies at an appraised value, for postal, military or other purposes.

By Sec. 4 it is provided, "Before any telegraph company shall exercise any of the powers or privileges conferred by this act, such company shall file their written acceptance with the Postmaster-General, of the restrictions and obligations required by this act."

Seventh street is undoubtedly an established letter carrier's route, and therefore a post road, under section 3965 of the Revised Statutes; and it appears from the affidavit presented in response to the rule, that on the 8th of June, 1867, the company filed with the Postmaster General its written acceptance of the restrictions and obligations required by the act.

Hence if that statute were unaffected by any other legislation, the act of 1866, under the decision in Pensacola *vs.* Western Union Telegraph Company, 96 U. S., page 1, would be a sufficient congressional authority to the company for the construction of its lines of telegraph on Seventh street; leaving the company answerable for any violation of the condition in the proviso of the first section; that its line should be so constructed and maintained as not to interfere with the ordinary travel on the street; and responsible, apart from the statute, to any private individual whose person or property might be injured in that or any other way by the exercise of its privileges under the statute.

But it is insisted by the complainants, that this general statute, so far as the District of Columbia is concerned, is qualified or controlled by the terms of the Joint Resolution of March 3d, 1863 (12 Statutes, page 827), entitled, "Joint Resolution in relation to telegraph companies in the District of Columbia," which declares:

"That the Independent Line of Telegraph, a corporation organized under the laws of the State of New York, for the purpose, and with the intention, of constructing a line of telegraph from Portland, Maine, to Washington city; or any other corporation or company organized according to law to construct a line of telegraph, be permitted to use any of the highways, roads, streets or grounds in the District of Columbia, in the extension and operation of their line to, in and through the city of Washington, and other parts of the District: *Provided, however*, that the location and construction of any such line of telegraph within the said District shall not be carried into effect without the written approval of the Secretary of the Interior and Commissioner of Public Buildings and Grounds first obtained, as to the proper route and course of said line to be followed within the said District of Columbia: *And provided further*, that the use of said highways, streets, roads and grounds hereby granted for telegraphic purposes shall not obstruct the use and convenient occupancy of said highways,

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streets, roads and grounds for public or other purposes, as the same are at present used. And all acts heretofore passed, and now in force in the Dis-trict of Columbia, for the protection of telegraph poles, wires, and corporations, shall be extended to any such line of telegraph."

It is not pretended that the company has obtained the written approval of either of the officers referred to in the first proviso, of the route and course of their line through this part of the city; and without this prior written approval, the location and construction of their line, by the explicit language of the resolution, could not "be carried into effect."

It is contended, however, on behalf of the telegraph company, that the resolution of 1863 is obsolete and no longer in existence, having been superseded or repealed by force of the subsequent act of 1866.

The general principles governing this inquiry have been laid down, time out of mind, with entire clearness, but it may be well to refer to them here.

It is clear there is no express repeal of the joint resolution of 1863 by the act of 1866. If the former be repealed or abrogated by the latter, the repeal is by implication only. A statute is not to be repealed by disuse. The leaning of the courts is, if possible, to reconcile two acts of the legislature, if they can reasonably stand together. McCook *vs.* Smith, 1st Black, 471; The Distilled Spirits, 11th Wallace, 365; Attorney General *vs.* Railroad Company, 35 Wis., 554. Where the powers or directions under several acts are such as may well subsist together, an implication of repeal cannot be allowed. Henderson's Tobacco, 11th Wallace, 657; United States *vs.* Walker, 22 Howard, 311.

The question is, whether the former statute has been repealed by *necessary* implication, for it is not sufficient to establish that subsequent laws cover some or all the cases provided for by it, for they may be merely affirmative or cumulative or auxiliary. There must be a positive repugnancy between the provisions of the new law and those of the old, and even then the old law is repealed by implication only *pro tanto* to the extent of the repugnancy. Davies et al. *vs.* Fairbairn et al., 3 Howard, 696.

In Canal Company *vs.* Railroad Company, 4 Gill & Johnson, page 152, the doctrine is thus stated:

"If laws and statutes seem contrary to one another, yet if by interpretation they may stand together, they shall stand." "And when two laws only so far disagree or differ as that, by any other construction, they may both stand together, the rule that subsequent laws abrogate prior and contrariant laws, does not apply, and the last law is no repeal of the former. Repeals by implication are things disfavored by law and never allowed of, but when the inconsistency and the repugnancy are plain and unavoidable."

The decision in State *vs.* Stoll, 17 Wallace, 425, seems to cover the ground of the present inquiry.

"If the provisions of a special charter or a special authority derived from the legislature, can reasonably well consist with general legislation whose words are not absolutely harmonious with it, the two are to be deemed to stand together, one as the general law of the land, the other as the law of the particular case."

In view of these general principles of construction, is the contention of the defendant tenable?

First. It is argued that the resolution of 1863 may well be considered as superseded or repealed, since it is not found in the volume of the Revised Statutes of the United States for the District of Columbia. But to this it may be replied, that the revision in question is of the laws only, and was not intended to comprehend resolutions of Congress, or such *quasi* private legislation as relates to incorporated companies, such as railroad and telegraph lines.

Section 1296 of the Revised Statutes of the District of Columbia, containing the "repeal provisions," declares, that all *Acts*, &c., *any portion of which is embraced* in the revision, are repealed; but this can have no application here, since no portion of the resolution of 1863 is embraced in the revision.

Second. It is further insisted that the resolution must be considered as obsolete and of no effect, since the office of the commissioner of public buildings and grounds

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has been abolished, and hence the law is incapable of execution.

There never was, in fact, such an officer known to the law as the "Commissioner of Public Buildings and Grounds." By the act of 29th of April, 1816, the three "Commissioners of Public Buildings" then in existence were abolished and their duties were imposed upon one officer called by the same name—the "Commissioner of Public Buildings," not adding the words "and grounds" to his title; and it was by this designation that the office was abolished by the act of March 2, 1867, section 2, which directed the chief engineer of the army to perform all the duties then required by law of the said commissioner. In the annual statutes since that time there has almost always appeared reference to "the officer in charge of public buildings," or "in charge of public buildings and grounds." In the act of 1874, chapter 22, by the latter designation he is required to assume supervision of the telegraph lines connecting the Capitol with the Departments; and, in the act of July, 1870, he is described as chief engineer "in charge of public buildings and grounds," and the same term is used in the act of July 21, 1871. In title 21, Revised Statutes, and in chapter 9, Revised Statutes of the District of Columbia, there are repeated references to the official "in charge of public buildings and grounds;" and since the abolition of the civil commissioner by the act of 1867, there never has been a time when there was not in existence at the seat of government an official charged with the duties which were performed by that commissioner when the resolution of 1863 was passed. No change in the office was made until nearly a year after the passage of the act of 1866, and during that interval it remained, as it had existed since 1816.

In my opinion the resolution of 1863 contemplated a written approval by *the officers who were charged with the duties*, severally referred to, in unmistakable terms, so that no company wishing to avail itself of its provisions could have entertained the slightest doubt as to the persons to whom it should apply for the desired approval. Nor has such a doubt existed to this day, for on the last page of the communication of Mr. Marean to the District authorities, filed a few days ago with his affidavit, he says:

"We also propose to run an underground wire through the executive grounds, for which application for permission has been made to the Commissioner of Public Buildings."

The right given to the telegraph companies by the joint resolution, to apply to the officers named for the written approval, could not have been taken from them by the change by Congress of the name of either officer. But if the change of the name could have prevented the companies from obtaining a proper approval, that circumstance, however unfortunate for them, could not operate to repeal the law. It would only have rendered proper an amendment of the resolution by Congress, and a suspension of the work of the company until that was effected. But the deliberate will of Congress could not be frustrated by such a change. If the right given to the telegraph company in 1863 by Congress was, by the terms of the law, to be exercised after the approval of the acting Secretary of the Navy, it would be a most unreasonable construction to hold that the right was lost to the beneficiary upon the abolishment of that office, although its duties had devolved upon some other of the officials of the Navy Department.

To the objection that the act of 1867 only imposed upon the chief of engineers the *duties* of the Commissioner of Public Buildings and Grounds and did not confer upon him the *powers* of that officer, it is enough to say that his joining in the written approval would here have been a *duty* on his part; and that the same expression was made use of in the act of 1816, to devolve upon the new commissioner all the authority theretofore exercised by the three commissioners and the superintendent of public buildings.

Upon a careful comparison of the two enactments, in view of the objections on behalf of the company and of the general principles of construction before referred to, I have no doubt that the resolution of 1863 was in full force when the act of 1866 was passed, and I see nothing in that act which either in terms, or by plain and un-

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mistakable repugnancy abrogates the requirements of the resolution. The two can well "stand together" and it seems to me eminently proper that it should be so held. Whatever may be the rights of this company elsewhere, I am of the opinion that the act of 1866 does not authorise the construction of the line of telegraph on Seventh street in Washington city, in the absence of the written approval required by the resolution of 1863.

Fifth. The telegraph company also relies upon the "permit" granted by the Commissioners of the District of Columbia to erect the poles along Seventh street from New York avenue to Boundary street. Does this permit afford sufficient justification for their proposed action, if congressional authority is wanting?

The powers of the Commissioners of this District are much less extensive than those possessed by municipalities in general. The Constitution committed to Congress the power to exercise exclusive legislation in all cases whatsoever over this District, and the ownership of the streets was fully vested in the United States by grant from the proprietors.

"This city," says the Supreme Court, in the case of Smith *vs.* The Corporation of Washington, 20 Howard, 147, "has been laid out and the streets dedicated to the public. As in all other cities or towns the legal title in the public streets is vested in the sovereign as trustee for the public."

The entire legislation by Congress upon the subject has proceeded upon this concession. The authority granted to the old corporation over the streets, was to open them and keep them in repair "agreeably to the plan of the city;" and the powers subsequently transferred to the District government by the act of February 21, 1871, and which by subsequent legislation devolved upon the successive boards of commissioners, were no more extensive in this particular. The language of section 77 of the Revised Statutes of the District of Columbia is thus construed by the Supreme Court in the Barnes Case, 91 U. S., 554:

"This board" [of public works], says Judge Hunt, "is invested with the entire control and regulation of the repairs of streets and alleys," &c.; which shows the opinion of that court that the words "entire control of" are to be taken to refer only to *the keeping in repair* of the streets. Section 222 *et seq.* of the Revised Statutes of the District of Columbia contains some limited grants to the authorities of the District to encroach upon the streets by parking, and in some other ways; and particular authority to the United States officials to protect them from encroachments; and an inhibition upon their occupation without the authority of Congress. Section 3 of the act of June 20, 1874, which constituted the first board of commissioners, committed to an officer of engineers, to be detailed by the President, the only power or control over the streets specified in the act, and that was confined in words, "to the work of repairing and improvement of the streets," &c.

Says Judge Dillon, in his work on Corporations:

"As the highways of a State, including streets in cities, are under the paramount and primary control of the legislature, and, as all municipal powers are derived from the legislature, it follows that the authority of municipalities over streets, and the use to which they may be put, depends entirely upon their charter or legislative enactments applicable thereto." Dillon, sec. 835.

This principle, with respect to municipalities, usually more liberally endowed with powers over the streets than is the case here, is especially applicable to the government of this District in view of its peculiar situation; and I conclude that appropriate as would be its interference in the regulation of a franchise imposing such a form of servitude upon the streets when conferred by the sovereign power, it is without authority to create it.

There is another reason why the District officials were without authority to issue the permit without legislative grant, which grows out of the nature of the servitude thus attempted to be imposed upon the streets of the city.

These streets, as we have seen, are to be held for the public convenience and use as a highway, and that use implies the right to use the entire surface without any permanent diminution whatever, except in so far as such diminution is essential to the

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better enjoyment of the remaining surface. To this extent it may well be held proper that such portions of the surface as are necessary may be used for the erection of posts for lighting the streets, for without lights their comfortable enjoyment by night would be impossible; and this authority is confided to the District government by law of Congress, and the Secretary of the Interior is directed to intervene and levy a tax to pay for the cost in case the District authorities should neglect to do so. In the same way the streets would be uncomfortable without proper drainage; and hence the power exists to make sewers beneath their surface, and to lay water pipes and gas pipes, or other conveniences for the public lighting of the streets. But the breaking of the surface for these purposes is temporary only, and when the work is completed the entire surface is restored to the public use. Again, under proper and reasonable regulations, the authorities may allow the temporary occupation of the sidewalk by boxes and such articles, and of the bed of the street by building materials. It is upon this principle that the courts have held that the laying of a passenger railroad track in the street is not an inconsistent servitude. It is a form of tramway as lawful as if it were formed of stones laid in parallel lines in the street, and is in aid of the natural use of the surface of the street when properly laid.

But these occupations of the street are altogether of a different character from that proposed by a telegraph company, which, for no purpose connected with the travel over the street or any other easement involved in its use, appropriates permanently a portion of the surface of the highway for business totally unconnected with the enjoyment of that highway by the public.

This distinction has been taken as the ground of the decision of numerous cases which denied the power of a municipality to confer a privilege involving the permanent occupation of a street for a purpose not in aid of the public easement. Even the post boy, if he were to stand permanently in the street, would become a trespasser; as it has actually been held that a traveler, who leaves his horse in the street to crop the grass, is liable as making an unlawful use of the public thoroughfare.

In two prominent cases this matter has been considered very fully in the State of New York. One is the case of Knox *vs.* Mayor, &c., of New York, in 55 Barb., 406. This was a suit brought by the plaintiff for the abatement and removal of an alleged public nuisance, claimed by the plaintiff to be specially injurious to him. The subject of complaint was a bridge which had been constructed by the defendants across Broadway at the junction with Fulton street, to facilitate travel. The plaintiff was lessee for a term, of premises situated at the intersection of the streets, upon which he had erected a building which was occupied in part by him as a store, and in part had been leased out to and was occupied by his under-tenants. The matter was discussed at great length by Mr. Justice Daniels. The court held that the bridge could not be considered as an ordinary servitude imposed upon the street, because its supports permanently occupied a portion of Broadway, thus diminishing the extent of its surface and impairing its usefulness to the adjacent property and to the public. To the complainant proprietor it was a deprivation of the light and air to which, as abutting owner, he was entitled. To the public it was an encroachment upon their plain right to every street, free from any permanent obstruction which occupied a place where they had a right to stand, for a purpose inconsistent with the proper use of the street.

From the opinion in the case of Story *vs.* The New York Elevated Railroad Company, reported in 90 N. Y., I will read a paragraph from page 161:

"The public purpose of a street requires of the soil the surface only. Very ancient usage permits the introduction under it of sewers and water pipes, and upon it posts for lamps. Of these things an abutting owner could not complain; but he is not required to hold his peace in the presence of the defendant's road, because it will, when completed, be permanent and continually causing injury to him. The remedy by injunction, for which he prayed, was appropriate, and should have been granted to him."

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And the court proceeds to show how the erection of the Elevated Road upon supports which occupy part of the surface of the street is inconsistent with the ordinary uses of the street. It also denied the right of the railroad to diminish the plaintiff's right without compensation; and, upon both these grounds, it was decided that the legislature of New York and the city of New York had no power to grant permission to the managers of the Elevated Road to build those roads; first, because the supports were permanently fixed on the surface of the street which the legislature had no right to encumber; and also because no compensation had been made to the property holders for the loss of light and air, and for the diminution of his ability to cross the street and otherwise use it at his pleasure, and the court of appeals held that a proper case had been presented for an injunction.

I was referred in the argument to no cases where the question of the right of a company to erect telegraph poles was involved, but, in the limited time since the argument, I have found several, some of which have important bearing upon this subject.

The case of Dusenbury *vs.* Mutual Telegraph Company, in 11 Abbott's New Cases, 440, Supreme Court of New York, was an action for an injunction to abate the erection of poles in the village of White Plains. The law of 1853, ch. 471, of the legislature of New York, authorized the company to construct their lines over private lands, "subject to the right of the owner or owners thereof to full compensation for the same." The company planted its poles and stretched its wires over them in front of the plaintiff's lots and residence, without previously making compensation to him. In this proceeding for their removal, the company contended that the plaintiff's right was clear to resort to an action at law to compel compensation. But it was held by the court that, as the payment did not precede the appropriation, the poles should be abated.

In Metropolitan Tel. Co. *vs.* Caldwell Lead Company, 50 New York Superior Court Rep., 488, it was decided that the erection of telegraph poles in the street, although under legislative and municipal authority, was not a street use, and was illegal; that the legislature has no power, as far as the rights of abutting owners are concerned, to authorize the use of the streets of New York city for the erection of poles to conduct telegraph and telephone wires, the legislative authority over the streets being limited to regulations of the use for which the streets are held by the city in trust; and that a telegraph company could not invoke the equitable powers of the court to restrain interference by abutting owners with its poles in city streets, even though its lines have been erected under legislative sanction.

The same court, in Little *vs.* The Brush Illuminating Company, 50 N. Y. Sup. Ct., 464, had before it an application for an order to restrain the defendants from erecting their poles in front of the complainant's property, to be used for lighting the streets of New York city. The court recognized the distinction before adverted to, between a legitimate and an inconsistent servitude upon a public highway, and refused to issue the injunction. The points of the decision, as stated by the reporter, are as follows:

"Although the streets of New York city are held by the municipal corporation in trust, to be used solely as public streets, and can be applied to no purposes inconsistent with street uses, yet the lighting of the streets is one of those uses to be exercised under legislative authority; and within the discretion given by the legislature as to the mode and manner of lighting the streets, the city authorities have full power in the matter, except that they may not authorize any structure to be erected which is subversive of and repugnant to the uses of a street as an open public street.

"Whether the poles complained of, erected under legislative and municipal authority, are inconsistent with the uses of a street, as a street, is largely a question of fact; but as they do not close the street to any appreciable extent, or seriously affect the light or air, or access to plaintiff's property, the action of the city authorities is conclusive.

"Whether the use of the streets by defendants for the purpose of supplying electricity to private persons, is a use in-

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cluded within the objects of the grant, may be doubted."

In Tiffany *vs.* U. S. M. Co., Daily Reg., April 9, 1884, Special Term, N. Y. Sup. Ct., O'Gorman, J., it was held that the legislature has no power to permit, by erection of poles for the support of wires in front of a person's premises, the taking of such person's property by impairing the use and enjoyment of the light, air and free access to his premises, which forms part of his easement in the public street, without having provided for the payment to such person of due compensation therefor; and that, whether the erection of poles would have been a substantial impairment of the use of such easement, was a question of fact.

An injunction was granted, although defendant denied intention to place *poles* in front of plaintiff's property.

The other cases are People *vs.* Met. Tel. and Telephone Co., 31 Hun, 596, where the appellate court reversed a decree awarding an injunction to restrain the erection of telegraph and telephone poles, under legislative and municipal authority; and People, ex rel. McIvans, *vs.* The Commissioners, 32 Hun, 93, where a mandamus was refused to compel the removal of a pole erected in the street under an act of assembly, by an illuminating company.

But apart from other considerations referred to in these two cases, and upon which they were decided, in part at least, they differed from the other cases cited and from the case at bar, in that they were attempts by the sovereign to punish and restrain companies for the plain exercise of its own grant. The sovereign may tie its own hands by its grants, while it would be powerless to deny a right of action to a citizen who has been injured by the exercise of the granted franchise.

To have refused this injunction would have had the effect of allowing the telegraph company to proceed at once with its work to the manifest detriment of the complainants and the citizens generally.

If I had thought the case less clear, I certainly would not have strained a point to allow this work to proceed in the form proposed, which by common accord is considered objectionable in large cities.

There has been no grant to telegraph companies at any time of this form of carrying their wires along the public highways. They selected this mode for themselves, to suit their own convenience, without any suggestion from the law givers; for I have found no statute authorizing the use of poles and aerial wires. They are not named or described in the joint resolution of 1863, or in the act of 1866.

If Congress in 1844 had undertaken to designate the manner in which the first telegraph of Morse should be constructed, it would doubtless have provided for an underground line, for such was Professor Morse's plan (as I know from a statement made by Professor Henry), up to a short time before the line was built.

Telegraph poles are mentioned only in two places in the legislation of Congress. The resolution of 1863, continues all laws then in force in the District for the protection of telegraph poles and wires. But up to that time no such act of Congress or city ordinance had been passed; and but a solitary ordinance has been found, subsequently adopted, for the protection of the municipal fire alarm telegraph.

The only other statute of Congress that mentions telegraph poles is the act of 1875 (18 Stats., 355), which declares that "the telegraph companies having offices in the Capitol, are directed to take from the Capitol grounds and the streets around the same, all telegraph poles, and connect their lines with the Capitol by cables laid under ground."

And the act of 1873 (17 Stats., 519), required the officer in charge of the public buildings and grounds to cause the immediate connection of the lines with any of the public buildings to be made under ground, or in such manner as not to injure the appearance of the Capitol or other public buildings.

The legislation of Congress, then, so far from recognizing or adopting the occupation of the streets by telegraph poles, certainly seems to be indicative of a policy to compel the use of underground connections in this city at least.

The plan is no novelty. The first actual electric telegraph line was constructed in England in 1835. Six wires, extending thirteen miles, were wound with hemp and placed in a pipe laid on the surface of the ground.

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Neither is it an impracticable system. Every telegraph wire in Paris for many years past has been conducted along the subterranean sewers. The wires of the great London Metropolitan companies are laid under ground; and, as far back as 1877, there were ten thousand miles of underground wires in different parts of England. Few things could be more impossible than for any telegraph company to obtain now the privilege in London or Paris to maintain its wires overhead, as this and other American companies have done for years with impunity in our cities.

Many long lines in Germany and throughout the continent are placed under ground, and the idea of aerial lines seems to be considered as behind the age in most enlightened countries.

The apprehension was expressed in the argument by the counsel of the company that the subterranean system might not prove effective in the working of the quadruplex arrangement so intelligently explained by Mr. Ashton. But the objection seems rather inconsistent with the application of the company to construct an underground wire from its office on Fifteenth street to the corner of Seventh street and New York avenue. If the insulation within that distance could not be maintained, the pole line up Seventh street to the Boundary would of course be useless. And if the insulation would be sufficient as far as Seventh street, it seems highly improbable that it could not be maintained up Seventh street for a mile further.

That the underground line is more expensive in first cost may well be true; but surely it is more just that the stockholders should pay the enhanced cost by a temporary reduction of their dividends, than that the non-shareholding public shall pay the amount multiplied manifold, in the permanent diminution of the value of their property, and the continued annoyance and disturbance of their comfort.

Judges are not to abdicate on the bench their knowledge of the common transactions of life and the progress of science and the arts. It is alleged in the bill that the wires may perfectly well be laid beneath the ground, and notwithstanding Mr. Marean's affidavit, I cannot but believe such is the fact.

I will not believe that the men of science of this country, who have been the pioneers in this great field of invention, cannot accomplish successfully here the result which has been attained in other countries. The inventive faculty has been busily employed for years in this direction. New methods of wire insulation have been patented; and there seems to be no good reason why the curbing on the busier streets should not be formed of metallic boxes in which the wires may be suspended.

If the courts shall determine that sound legal objections exist to the imposition of this inconsistent form of servitude upon the public streets, an expedient will soon be found to meet all difficulties that may arise from the use of the underground method.

The courts have frequently possessed sufficient discernment to believe in the probability of scientific improvements that were derided by those who assumed to possess more accurate knowledge. An interesting incident, illustrating at once the incredulous conservatism of a great lawyer, and the more hopeful and thoughtful views of an eminent judge is preserved in the report of the case of Harper *vs.* Hampton, in the General Court of the State of Maryland, in 1805, 1 Harr. & Johns., 715. The judge had told the jury they might presume that a notice had been given from Philadelphia to Charleston in ten days. The famous Luther Martin, the attorney general, who had resisted the ruling, ejaculated, "none but an angel, on the wings of the wind, could give notice in ten days at such a distance;" an explosion which Chase, the presiding judge, resented as an indecorum. The ruling should not have been considered as involving an absurdity at that day, in view of the existence at that time of semaphores, and of the use of carrier pigeons; but the cavil seems doubly absurd to-day, when we reflect that the telegraph will inform us, in this room, of transactions in London, this morning six hours in advance of their occurrence, according to our reckoning of time.

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Judicial rulings must recognize at least the more obvious capabilities of scientific progress. I feel that it would be as much a step backwards to strain a point to reinvigorate what it seems to me is a worn-out system, as it would be to seek anxiously for authority to dig wells again in cities, or to discard illuminating gas or the electric light from our streets and return to dip candles or oil lamps.

Sixth. To what remedy are the complainants entitled against the District authorities? The District has demurred to the bill, and as I think the complainants are entitled to an injunction, the demurrer must be overruled.

It is objected on the part of the Commissioners, that, as they have already completed whatever is complained of against the District, there is no scope for an injunction against them. But it appears from an inspection of the permit filed with the affidavit that it "is revocable at the pleasure of the Commissioners." And the second prayer of the bill is, that the District shall be restrained from allowing the Western Union Telegraph Company to erect the poles and placing the wires upon them, and from issuing further permits for that purpose; and that any permit so issued may be declared void.

So far as the prayer is addressed to the issuing of further permits, it asks expressly for an injunction in the usual form. But, by the plain sense of the existing permit, it can only continue in force from day to day by the permission of the Commissioners, and the withholding of that permission in the future will prevent the reliance by the company upon the District as its source of authority. This permission the court can direct the Commissioners to refuse, and their duty will be to signify such refusal to the company.

But there seems to be no reason, apart from this view of the subject, why the court should not award an injunction effectively mandatory, by restraining the Commissioners from permitting their permit to remain unrevoked.

The injunction against the defendant company will be in the form prayed for in the bill.

Real Estate Brokers

WHERE SALE IS NOT COMPLETED.

A broker employed to make a sale, under an agreement for the exclusion of all other agencies, is entitled to his commissions when he produces a party ready to make the purchase at a satisfactory price, and the principal cannot relieve himself of liability by a capricious refusal to consummate the sale, or by a voluntary act of his own disabling him from performance. Moses v. Bierling et al., 31 N. Y., 464; Stewart v. Mather et al., 32 Wis., 349; Young v. Hunter, 2 Seld., 203; Frazer v. Wyckoff, 63 N. Y., 548.

A broker, in the nature of things, can do nothing more than find a party who will be acceptable to the owner and enter into a contract of purchase with him; when he does so, he is entitled to his commissions. If the purchaser then refuse to perform owing to false representations by the owner, he will not be deprived of his commissions. Wentworth v. Luther, 21 Barb., 145.

When he thus produces a purchaser, his ability is to be assumed unless the contrary appear, and when a contract in writing for the sale of the property is signed by the owner and purchaser at the price asked, the broker has earned his commissions, and his right to it is in no way affected by the subsequent refusal of the purchaser to fulfil the contract. Simonson v. Kissick, 4 Daly, N. Y., 145.

[The same rule applied where the failure to complete the contract was in consequence of a defect of title. Doty v. Miller, 43 Barb., 529; Knapp v. Wallace, 41 N. Y., 477.]

[The owner cannot escape commissions by a refusal to sell to the purchaser procured or by a sale to another.] Phelan v. Gardner, 43 Cal., 306.

[The owner cannot escape by taking the trade in his own hands pending negotiations and completing it either at or below the contract price.] Keys v. Johnson, 68 Penn. St., 42; Martin v. Silliman, 53 N. Y., 615.

PROCURING CAUSE OF SALE.

Where a sale is effected through the efforts of a broker, or through information derived of a broker, so that he may be said to have been the procuring cause, the law leans to that construction of his contract with the vendor which will secure the payment of his commission rather than the contrary construction. Even though the terms be reduced or altered by the vendor. Stewart v. Mather, 32 Wis., 344; Lincoln v. McClatchie, 36 Conn., 136.

A broker for the sale of real estate is enti-

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tled to his commissions when, in the language of the case, he is the "procuring cause of the sale," that is where he has found a purchaser and brought him to his employer and a contract is made between them for the sale of the property or the purchaser is ready to purchase and the seller refuses or is unable to consummate the sale. Fraser v. Wyckoff, 63 N. Y., 448.

Broker must be "procuring cause." Lyon v. Mitchell, 36 N. Y., 235, 682; McCleave v. Paine, 49 N. Y., 561.

Broker is not bound to make a sale on the terms first proposed by the seller, but if he makes any sale or exchange which is accepted by the vendor he is entitled to his commissions. Redfield v. Tegg, 38 N. Y., 212.

If a broker introduces a purchaser or discloses his name and through such negotiations or disclosure a sale is effected, even though the owner does the work, the agent is entitled to his commissions. Jones v. Adler, 34 Md., 440; Keener v. Hand & Brooks, 2 Md., 63; Beall v. Creswell, 3 Md., 196; Tyler v. Parr, 52 Mo., 249; Lincoln v. McClatchie, 36 Conn., 136.

Until a broker has faithfully discharged the obligation assumed in the contract with his principal he is not entitled to the agreed commission. Moses v. Bierling et al., 31 N. Y., 463.

The clerk of a broker employed to sell land, who has access to the correspondence between his principal and vendor, stands in such a relation of confidence to the latter that if he becomes the purchaser he is chargeable as trustee for the vendor and must reconvey or account for the value of the land. Gardner v. Ogden, 22 N. Y., 327.

This is an exhaustive treatise on the rights of trustees and those standing in a fiduciary capacity to the vendor of land.

Mullen v. Keetzlet & Lampton, 7 Bush, 253. In this case the broker was not the agent of both parties, he merely brought them together while they did the negotiating themselves; there was also a local custom proved warranting charges to both parties; *held*, that he was entitled to commissions from both parties. Lloyd v. Colston et al., 5 Bush, 581.

Generally, however, an agent cannot act for both buyer and seller and get commissions from both. Everhart v. Searle, 71 Penn., 260; Lazarus v. Bryson, 3 Binn., 54; Ex parte Bennett, 10 Vesey, 381; 8 Tomlins Brown, 72.

There must be employment to constitute a real estate broker an agent, and this service, however slight, must be the efficient cause of the sale.

Mere introduction of the purchaser, an advertisement, etc., is enough. Earp v. Cummings, 54 Penn., 394.

On an exchange of lots effected by a broker he cannot recover commissions from the owner of each lot.

If owner has a knowledge of such an arrangement it can be enforced. Pugsley v. Murray, 4 E. D. Smith, 245.

A broker engaged to procure a loan is entitled to his commissions when he finds a lender with money in readiness and obtains a consent to the loan, with an avowal of the proposed security, although the lender, upon examining title, finds the property encumbered and therefore refuses to consummate the transaction.

Also, where the first broker transferred the business to a second and through him the loan was made; *held*, second entitled to commission. Hally v. Gosling, 3 E. D. Smith, 263; Walkens v. Consall, 1 E. D. S., 65.

Broker cannot recover commissions from both parties in absence of express arrangement of all. Vandepoel v. Kearns, 2 E. D. S., 170; Dunlap v. Richards, 2 E. D. S., 181.

To enable a broker to recover commissions the mere fact of his having introduced the purchaser to the seller will not be sufficient, but if it appears that the introduction was the foundation on which the negotiations proceeded the parties cannot afterwards by agreement withdraw the matter from the broker's hands and deprive him of commissions.

The broker will be entitled if he was up to a certain time the agent or middleman between the parties, although the contract be afterwards completed without his intrumentality or interference. Wilkinson v. Marlin, 8 Car. & P., 1.

Where agent is procuring cause. Mundy v. Curry, 7 Car. & P., 584; Burnett v. Burch' 7 Car. & P., 619.

Case where agent brings to a party a person with whom he makes an agreement for a charter party; *held*, entitled to recover though owner refuses to sign the charter party. Cook v. Fiske, 12 Gray, 491.

Where a broker held a written contract to sell a farm, he gets a purchaser who, by agreement with the owner, takes a portion; *held*, entitled to *pro rata* commissions. Pierce v. Stephens, 46 Ala., 555.

The substitute became a part of the original agreement.

M agreed with H to pay him $10 if he would find him a tenant. C also agreed with H to pay him $5 if he would find him a farm.

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M and C were brought together by the procurement of H, and they then consummated a contract for letting the farm. *Held*, that this did not constitute an agency on the part of H.

Two employments no bar. Herman v. Waterman, 1 Wis., 151.—*Legal Adviser.*

The Courts.

PROBATE COURT.—Justice Hagner.

July 24, 1885

Estate of Gurden Snowden. Order authorizing administrators to distribute in specie.

Estate of Samuel F. Conover. Letters granted to Samuel V. Niles on bond of $50,000 and will admitted to probate.

Estate of Chas. Clark. John J. Wilmarth appointed administrator. Bond, $1,200

Estate of Eleanor Miller Petition of Chas. Miller for the appointment of Horatio Browning an additional administrator.

Estate of Thos. T. Scorff. Letters granted to Eleanor Scorff, widow. Bond, $400

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of Michael Caton, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of July, 1885

MARY CATON,

CHARLES A. ELLIOT, Solicitor. 26 Administratrix c.t.a.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William Bowles, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 17th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of July, 1885.

JAMES BELLEW.

HOSEA B. MOULTON, Solicitor. 30 Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 22d day of July, 1885.

JOHN STEWART v. EUPHEMIA STEWART. } No. 9538 Equity Docket. 25.

Application of divorce on the ground of desertion.

On motion of the plaintiff, by Mr C. Storrs, his solicitor, it is ordered that the defendant, Euphemia Stewart, cause her appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.

True copy. Test: 30 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 22d day of July, 1885.

WILLIAM W. METCALF v. WILLIAM DELANEY, C. H. HOLDEN and others. } No. 9540.

On motion of the plaintiff, by Messrs. Hagner & Maddox, his solicitors, it is ordered that the defendants, William Delaney and C. H. Holden, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.

A true copy. Test: 30 R. J. MEIGS, Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 22d day of July, 1885.

JOHN H. KETCHAM v. JAMES W. PATTERSON. } No. 9541. Eq. Doc. 25.

Bill to quiet title.

On motion of the plaintiff, by Messrs. Birney & Birney, his solicitors, it is ordered that the defendant, James W. Patterson, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.

A true copy. Test: 30 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of George M. Schaefer, late of the District of Columbia, deceased

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 17th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of July, 1885.

KATHARINE SCHAEFER,

H. R. WEBB, Solicitor 30 Administratrix.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of John Alexander Blundon, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of July, 1885.

SARAH ELLEN BLUNDEN,

J. B. THOMPSON, Solicitor. 28 Executrix.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Wilhelm Bandel, late of Bregenz, Austria, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 3d day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 3d day of July, 1885.

JAMES L NORRIS.

JNO. E. NORRIS, Solicitor. 28 Administrator.

THIS IS TO GIVE NOTICE,

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Emily Beale, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23rd day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23rd day of July, 1885

30 JAMES H. SAVILLE, Administrator.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Thomas I. Middleton, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 22d day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of July, 1885.

30 B. F. LEIGHTON, Administrator.

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Legal Notices.

THIS IS TO GIVE NOTICE.
That the subscribers, of Port Tobacco, Md., and Washington, D. C. have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration W. a. on the personal estate of Mary C. McDonnell, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscribers on or before the 16th day of July next; they may otherwise by law be excluded from all benefit of the said estate.
Given under our hands this 16th day of July, 1885
F. MARCELLUS COX.
30 GEORGE E. HAMILTON.
Administrators w. a.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
LENA HOFFMAN v. WILLIAM THOMAS et al } No. 9406. Equity Doc. 24.
Benjamin F Leighton, trustee in this cause, having reported a sale of all the real estate and premises described in these proceedings to one Robert Reyburn, jr., for the sum of $1650, it is this 25th day of July, A. D. 1885, ordered that said sale be finally ratified and confirmed unless cause to the contrary be shown on or before the 1st day of September, A. D. 1885.
Provided, that a copy of this decree be published in the Washington Law Reporter, once a week for three successive weeks before that day.
By the Court.
A true copy. 30 Test: R. J. MEIGS, Clerk

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 24th, 1885.
In the matter of the Estate of Eleanor Miller, late of the District of Columbia, deceased.
Application for Letters of Administration on the Estate of the said deceased has this day been made by Charles Miller, who prays that Horatio Browning may be associated with him as co-administrator.
All persons interested are hereby notified to appear in this court on Friday the 14th day of August next at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed
Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. A. B. HAGNER, Justice.
Test: 30 H. J. RAMSDELL, Register of Wills.
EDWARDS & BARNARD, Solicitors.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, sitting in Equity. July 6, 1885.
SAMUEL A. PEUGH, Complainant, against HENRY S. DAVIS, Defendant. } 1713. Eq. Doc. 9.
Henry E. Davis, the trustee herein appointed by the Court in the above entitled cause to make sale of squares numbered 910 and 911 in the City of Washington and District of Columbia, having reported sales by him of the said premises as follows, to wit: Lots 2 and 3, square 910, to Oella Chappel, for $884 17; lots 1 and 3, square 911, to Thomas Potee, for $4360.50; and lots 1, square 910, and 2, 4, 5, 6, 7, 8, 9 and 10, square 911, to Henry S. Davis, for $5416 90—the aggregate amount of said sales being $10,661.57;
It is, this 6th day of July, A. D. 1885, ordered that the said sales be ratified and confirmed, unless cause to the contrary be shown on or before the 6th day of August, A. D 1885.
Provided, a copy of this order be published once a week for three successive weeks, in the Washington Law Reporter before the said 6th day of August, A. D. 1885.
A. B. HAGNER.
A true copy. Test: 28 R. J MEIGS, Clerk.

THIS IS TO GIVE NOTICE
That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Leonora A. Ellis, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of July next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 13th day of July, 1885.
HORATIO BROWNING,
EDWARDS & BARNARD, Solicitors. 29 Administrator.

Legal Notices.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of John R. Cathin, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of June, next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 19th day of June 1885.
CARRIE H. CATHIN.
JOSEPH J. DARLINGTON, Solicitor. 28 Executrix.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Richard T. Merrick, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of July next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 18th day of July, 1885
29 MARTIN F. MORRIS, Executor.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Nannie Merrick, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 18th day of July next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 18th day of July, 1885.
29 MARTIN F. MORRIS, Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 15th day of July, 1885
HARRY W. GREEN ET AL. v. EDWARD I. GREEN ET AL. } No. 9257. Eq. Docket 24.
On motion of the plaintiffs, by Messrs. Knott & Ennis, their solicitors, it is ordered that the defendants cause their appearance to be entered herein on or before the first rule-day, occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.
By the Court. A. B HAGNER, Justice.
True Copy Test: 29 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. The 10th day of July, 1885.
GEORGE CALLAGHAN v. MARY J. O'FLANNIGAN et al. } 9243. Eq. Doc. 24.
On hearing the report of James Fullerton, trustee, it is, this 10th day of July, A. D. 1885 ordered that the sale reported by said trustee, and the expenses thereof, be confirmed and allowed, without reference to the Auditor, unless cause to the contrary be shown to this Court on or before the 10th day of August next.
Provided, that a copy of this order be published in the Washington Law Reporter once a week for three weeks before said 10th day of August, 1885.
The report states the amount of sale and interest on deferred payments to be $2141.20.
A. B. HAGNER.
A true copy. Test 28 R J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE,
That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Mason Campbell, late of the District of Columbia deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of July next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 14th day of July, 1885
MARY A. CAMPBELL,
29 Executrix, 1115 Mass. Ave., n. w.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 17th, 1885.

In the case of Andrew C. Bradley, Administrator of Jessie M. Farnum, dec'd, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 7th day of August, A. D. 1885, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

Test: 29 H. J. RAMSDELL, Register of Wills

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Holding a Special Term for Orphans' Court Business. July 17th, 1885.

In the case of J. Holdsworth Gordon, Executor of Thornton Yates, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 7th day of August, A. D. 1885, at 11 o'clock, a. m., for making payment and distribution under the Court's direction and control; when and where creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

Test 29 H. J. RAMSDELL, Register of Wills

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 17th, 1885.

In the case of Anson S. Taylor, executor of Isaac Bradley, deceased, the executor aforesaid has, with the approval of the court, appointed Friday, the 14th day of August, A. D. 1885, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 29 H. J. RAMSDELL, Register of Wills

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 17, 1885

In the case of Henriette C. Metzerott and Samuel Cross, Executors of William G. Metzerott, dec'd, the Executors aforesaid have, with the approval of the Court appointed Friday, the 7th day of August, A. D. 1885, at 11 o'clock, a. m., for making payment and distribution under the court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 29 H. J. RAMSDELL, Register of Wills.
ENOCH TOTTEN and GORDON & GORDON, Solicitors.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 21st day of July, A. D. 1885.

ANNA ELIZA BARNARD et al, Complainants,
v.
WILLIAM RUSSELL WHITING and ANNA MCHENRY BARNARD, Defendants
} Equity. No. 9537.

The object of the bill filed herein, is the sale of parts of lots 1 and 2 in Square 167 in the City of Washington, and distribution of the proceeds of such sale among the complainants and defendants.

On motion of the complainants, by Mr. Randolph Coyle, their solicitor, it is by the Court ordered that the defendant, William Russell Whiting, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default

By the Court. A. B. HAGNER, Justice.
True copy. Test: 29 R. J. MEIGS, Clerk
By A. M. CLANCY, Assistant Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Holding a Special Term for Orphans' Court Business, July 17th, 1885.

In the matter of the Will of Robert M. Reynolds, late of the District of Columbia, deceased

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Orpha W. Reynolds.

All persons interested are hereby notified to appear in this court on Friday, the 7th day of August next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 29 H. J. RAMSDELL, Register of Wills.
FRANKLIN H MACKEY, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

HENRY CLARK ET AL
v.
HENRY HOHMAN ET AL.
} 9338 Eq Doc. 24.

The trustee, Randall Hagner, having reported to the Court that he has sold the real estate in the proceedings in this cause mentioned, to wit, all of original Lots six, seven and eight, in Square west of Square numbered six hundred and ninety-five, on the ground plat or plan of the city of Washington, in the District of Columbia, to E. Kurtz Johnson, at and for the sum of $7606 48, and that the said purchaser has fully complied with the terms of sale:

It is, therefore, this 17th day of July, A. D. 1885, ordered, that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 17th day of August, A. D 1885

Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said last named day.

A B. HAGNER, Asso. Justice.
A true copy. Test: 29 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 17, 1885.

In the matter of the Estate of Charles King, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration c. t. a on the estate of the said deceased has this day been made by Elizabeth King.

All persons interested are hereby notified to appear in this court on Friday, the 7th day of August next, at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 29 H. J. RAMSDELL, Register of Wills.
M. G EMERY, JR., Solicitor

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 16th day of July, A. D. 1885.

ELEANOR THOMPSON
v
SARAH J. MUSSER et al.
} No. 8774. Eq. Doc. 23.

Ordered that the sale made and this day reported by Reginald Fendall, trustee for the sale of the real estate in this cause mentioned, be ratified and confirmed unless cause to the contrary be shown on or before the 17th day of August, A D 1885

Provided a copy of this order be inserted in the Washington Law Reporter once in each of three successive weeks before said day.

The report states that the property sold for $6,500.

A. B. HAGNER.
A true copy. Test 29 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 14th day of July, 1885.

CHAS. C. COOMBS
v
HATTIE F. COOMBS
} No 9524. In Equity.

On motion of the plaintiff, by Mr. Chas. Thompson, jr., his solicitor, is it ordered that the defendant, Hattie F. Coombs, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 29 R. J. MEIGS, Clerk.

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Legal Notices.

THIS IS TO GIVE NOTICE.
That the subscribers, of the District of Columbia have obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration, c. t. a., on the personal estate of Gurden Snowden, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscribers on or before the 30th day of June next; they may otherwise by law be excluded from all benefit of the said estate,
Given under oer hands this 30th day of June, 1885.
JAMES H. SMITH.
WILLIAM B. WEBB,
28 Administrators c. ta. a.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c.t.a. on the personal estate of John E. Thompson, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 3rd day of July next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 3d day of July, 1885.
MARY E. THOMPSON,
28 Administratrix c. t. a.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Sarah E Wilson, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of July next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 6th day of July, 1885.
THEODORE D. WILSON,
D. J. PARTELLO, Solicitor. 28 Executor

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Samuel, alias Samuel H., Hill, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of July next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 6th day of July, 1885.
GEORGE E. JOHNSON,
28 Executor.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of James S. Magee, late of the District of Columbia, deceased.
All persons having claims again the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 26th day of June next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 26th day of June, 1885.
28 SUSAN ST. C. MAGEE,
N. CARUSI, Solicitor. Administratrix

THIS IS TO GIVE NOTICE.
That the subscribers, of the District of Columbia, and Princeton, N. J., respectively, have obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testrmentary on the personal estate of William McLean, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscribers on or before the 6th day of July next; they may otherwise by law be excluded from all benefit of the said estate.
Given under our hands this 6th day of July, 1885.
SAM'L S. SHEDD.
WILLIAM H. ROBERTS.
JAS. G. PAYNE, Solicitor. 28

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 10th, 1885
In the matter of the Probate of the Will of Ira Croson, late of the District of Columbia, deceased.
Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by Charles Allen and Henry L. Rose.
All persons interested are hereby notified to appear in this court on Friday, the 31st day of July, next, at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day
By the Court. A B HAGNER, Justice.
Test: 28 H. J. RAMSDELL, Register of Wills

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business. July 10th, 1885
In the case of Woodbury Blair, Administrator of Robert E. Boston, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 31st day of July, A. D. 1885, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
Test 28 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 8th day of July, 1885.
SIDNEY A. GILBERY
v
JOHN F. GILBERY. } No 9517 Eq. Doc. 25
Bill for Divorce for desertion.
On motion of the plaintiff, by Messrs. A B. Webb and G. A. Kuhn, her solicitors, it is ordered that the defendant, John F. Gilbery, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.
By the Court. A. B. HAGNER, Justice.
True copy Test: 28* R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 8th day of July, 1885.
WILLIAM E. TAYLOR
v
AGNES E TAYLOR. } No. 9450. Eq Doc. 24.
Bill for Divorce upon the ground of desertion.
On motion of the complainant, by Mr E. A. Newman, his solicitor, it is ordered that the defendant, Agnes E. Taylor, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.
By the Court. A. B. HAGNER, Justice.
True copy. Test: 28 R. J MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 8th day of July, 1885.
CHARLES A. ELDREDGE
v.
ELIJAH K. BRUCE. } No. 26,265. Law.
On motion of the plaintiff, by Mr. R. B. Lewis, his attorney, it is ordered that the defendant, Elijah K. Bruce, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.
By the Court. W. S COX, Justice
True copy. Test: 28 R. J. MEIGS, Clerk

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Anna Pinion, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of July next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 10th day of July, 1885.
JOHN H. KING,
RUTLEDGE WILLSON, Solicitor. 28 Executor.

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Washington Law Reporter

WASHINGTON - - - - - - - - August 1, 1885

GEORGE B. CORKHILL - - - EDITOR

THE FACT that the rights of aliens in this country, and of American citizens in foreign countries, have recently been the subject of considerable discussion, adds especial interest to the case of Edye v. Robertson, 112 U. S., 580, lately decided by the Supreme Court of the United States. The rule that a treaty does not enforce itself, but requires legislation to enable the court to give it effect is explained, as are also those provisions contained in treaties which grant certain rights and privileges to the citizens of one country residing within the jurisdiction of another foreign to it, and which regulate and control their exercise. These the courts unqualifiedly hold are part of the supreme law of the land. The case is one of great importance and the opinion abounds in learning.

In the course of his opinion Mr. Justice Field says:

"A treaty is primarily a compact between independent nations. It depends for the enforcement of its provisions on the interest and the honor of the governments which are parties to it. If these fail its infraction becomes the subject of international negotiations and reclamations, so far as the injured party chooses to seek redress, which may in the end be enforced by actual war. It is obvious that with all this the judicial courts have nothing to do and can give no redress. But a treaty may also contain provisions which confer certain rights upon the citizens or subjects of one of the nations residing in the territorial limits of the other, which partake of the nature of municipal law, and which are capable of enforcement as between private parties in the courts of the country. An illustration of this character is found in treaties which regulate the mutual rights of citizens and subjects of the contracting nations in regard to rights of property, by descent or inheritance, when the individuals concerned are aliens.

"The Constitution of the United States places such provisions as these in the same category as other laws of Congress by its declaration that 'this Constitution and the laws made in pursuance thereof, and all treaties made, or which shall be made under authority of the United States, shall be the supreme law of the land.' A treaty, then, is a law of the land as an act of Congress is, whenever its provisions prescribe a rule by which the rights of the private citizen or subject may be determined. And when such rights are of a nature to be enforced in a court of justice, that court resorts to the treaty for a rule of decision for the case before it as it would to a statute.

"But even in this aspect of the case there is nothing in this law which makes it irrepealable or unchangeable. The Constitution gives it no superiority over an act of Congress in this respect, which may be repealed or modified by an act of a later date. Nor is there anything in its essential character, or in the branches of the government by which the treaty is made, which gives it this superior sanctity.

"A treaty is made by the President and the Senate. Statutes are made by the President, the Senate and the House of Representatives. The addition of the latter body to the other two in making a law certainly does not render it less entitled to respect in the matter of its repeal or modification than a treaty made by the other two. If there be any difference in this regard, it would seem to be in favor of an act in which all three of the bodies participate. And such is, in fact, the case in a declaration of war, which must be made by Congress, and which, when made, usually suspends or destroys existing treaties between the nations thus at war.

"In short, we are of opinion that, so far as any treaty made by the United States with a foreign nation can become the subject of judicial cognizance in the courts of this country, it is subject to such acts as Congress may pass for its enforcement, modification or repeal."

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Supreme Court District of Columbia

SARAH MORROW *vs.* HENRY D. JAMES ET AL.

EQUITY. No. 7758.

Decided April 27, 1885.
The CHIEF JUSTICE and Justices WYLIE and JAMES sitting.

Where the constitution of a building association required the stockholders to pay their dues upon their stock at regular stated meetings, payments not made at such meetings are not valid payments to bind the association in case of the embezzlement of such moneys by the officer so receiving them.

THE CASE is stated in the opinion.

WM. HENRY BROWNE for plaintiff.

R. K. ELLIOT for defendant.

Mr. Justice JAMES delivered the opinion of the court.

In the case of Sarah Morrow against Henry D. James and others. A bill was filed demanding the settlement of the account of a building association, and for the payment to the complainant of the moneys paid in by her with interest thereon at the rate of ten per cent. She sets forth the description of this association, naming a large number of stockholders, states the fact that, under one of the articles of the association, she had made payments of more than a dollar a month; that is to say, payments for the half year on two different occasions, becoming entitled thereby, under article 6 of the association, to eight per cent. on those payments. She then claims, under another article, the right of withdrawal or of restitution to her of her payments with ten per cent. per annum unless it shall appear, on the settlement of the accounts, that the association has sustained losses and has not made profits with the result of cutting down the amount to which she would be entitled.

The case was here before on the bill and answer, and at that time we rendered a decree construing the meaning of the provisions of their constitution or articles. The decree was as follows:

"This case coming on to be heard on appeal from the decree rendered at the Special Term, &c., and the court being of opinion that the moneys misappropriated by Seth A. Terry, the secretary of the defendant, as shown in the proceedings, being the moneys paid into his hands by the individual shareholders, and not paid by him into the treasury of the association, was not a loss of the association within the meaning of the constitution and by-laws thereof."

The defence set up in the answer which the defendants have attempted to support by proof, was that a large amount of money, probably $25,000, had been lost to the association by embezzlement committed by their secretary. It was claimed that these moneys were paid into the treasury; that the secretary was authorized, under the articles of association, to receive the moneys primarily and to turn them over to the treasurer, and that, when they reached the hands of the secretary, they were, therefore, the assets of the association and were in the treasury, though not yet in the hands of the treasurer.

The language of the article referred to, namely section 6 of article 4, is that "the treasurer shall receive all moneys paid into this association, and give his receipt for the same to the secretary." It is claimed that this language imports that, inasmuch as the treasurer is to give his receipt to the secretary, the moneys are first to be received by the secretary and then paid over to the treasurer. If they are, by virtue of the constitution, received by the secretary as its receiving officer, they are already assets of the association, provided they are received according to the constitution in other respects.

We are of opinion that moneys were properly paid to the secretary as the receiving officer of the association, provided (it must be added) they were paid according to the other provisions of the constitution. The provision to which I refer in stating that proviso, is found in article 6, and is as follows:

"Each stockholder or trustee for each and every share of stock held by him in this association, shall pay into the treasury in lawful money at each and every stated meeting of this association on the second Friday of each month, the sum of one dollar, until his share of the series of stock on which such monthly payment shall be made, shall reach a value of $200, when he shall be paid $200 for each share of the particular series owned by him so

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maturing, and the stock shall thereupon be cancelled."

After we had made that decree, by another clause of which we sent back the case for an accounting to be taken before the auditor upon testimony to be taken by him, the auditor took the testimony and made a report in which he held that certain moneys said to have been paid to the secretary under certain peculiar circumstances, were not assets of the association. The case comes now before us again upon the bill and answer and proofs.

We find that a large amount of money, amounting probably to $25,000, was paid to the secretary, at a room ordinarily occupied by the association at its monthly meetings, but not at a meeting. These moneys he never reported to the treasurer. He gave his receipts according to the regular form used when he received moneys at the meetings. That form was approved and was provided by the association itself. It was a correct form, and we are of opinion that the moneys should be first paid to the secretary and that he should first receipt for them, then that he should turn them over to the treasurer, and that this was a proceeding carefully provided for by the article which I have just read. The object of the arrangement was that both of these officers, the secretary and the treasurer, should be present at the same time that members of the association surrounded them making their payments, and that everything should be done under observation. That is upon the very face of the article, which says, "each stockholder shall make this payment into the treasury at each and every stated meeting." The arrangement furnished complete protection to the treasurer in keeping his accounts and so as to limit his responsibility, and to the parties making the payments.

These payments were made in disregard of that carefully devised protection. They were not made at the meetings when the treasurer and the stockholders in greater or less numbers were present, but the parties paying the money supposed that the secretary would carry out the arrangement afterwards by turning the moneys over to the treasurer. To my mind it is just about equivalent to a payment made to a receiving teller of a bank at his house trusting that he would pay the money into the bank.

This protection furnished to the stockholder and to the treasurer was neglected by the parties making the payments, and it is for them to take the consequences. We are of opinion that the loss sustained by the appropriation of these moneys by this secretary was not therefore a loss of money out of the treasury, and cannot be taken into account in settling the affairs of the association, and that the result is that this complainant is entitled to the full amount, as the account shows, of the money paid by her with ten per cent. thereon. We therefore affirm the report.

The CHIEF JUSTICE dissented.

Myers' Federal Decisions.

Volume IX of Myers' Federal Decisions has been received. From a rather careful examination of the advance sheets of this volume, which were sent us a short time ago, we formed a very favorable opinion of what volume 9 would be. We may frankly say that it has fully met our expectations, and is in every way up to the high standard of its predecessors.

Volumes 1, 2, 3, 4, 5, 6, 7, 10 and 9, respectively, have been issued—10 and 9 being published out of order because the others were not sufficiently advanced for printing. We look for volume 8 next, which will complete the series from 1 to 10. We understand that there will be thirty volumes in all. The prices given by the publishers are $200 to the first 1,000 subscribers; $250 to all subsequent. Some of the volumes are complete in themselves, *e. g.*, volumes 9 and 10. Single volumes may be obtained at from $7.50 to $10.00 each.

Volume 9 deals with the subject of conveyances (Conveyances to Coroners). A subject most prolific in learning, and most important. From the table of contents it will be seen that the cases, printed in full or digested in this volume, cover the whole subject in its length and breadth.

The subject of conveyances is so practical, and an accurate knowledge of it so necessary, that this number of the series will at once be put into daily use.

We are gratified to observe that some of our leading lawyers are providing themselves with Myers' Federal Decisions, and they invariably express the most flattering opinion of them.

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In our reviews of the former volumes, we endeavored to give some idea of the method of arrangement pursued in the compilation of the series, and it would, therefore, be unnecessary for us to make further mention of it now.

Without doubt the work, when completed, will be one of the most valuable extant, and we are to be congratulated upon having such books in our library.

All of the volumes are printed in large, clear type on fine paper, and bound in the best of law sheep. The publishers, The Gilbert Book Co., St. Louis, Mo., excel in the mechanical execution of their publications, and the volumes of this series receive at their hands the best that printer and binder can bestow.

New Jersey Court of Appeals.

NEW YORK, LAKE ERIE & WESTERN R. R. Co.
vs.
STEINBRENNER.

Master and Servant: Negligence; Contributory; Importation of.

Depue, J.: This was an action for damages to the plaintiff caused by a collision with the defendant's train. The plaintiff and his four nieces were driving in a coach owned by one Martin, a livery stable keeper. The rulings of the judge and the exceptions were brought up by writ of error. The judge instructed the jury that if the plaintiff himself was guilty of negligence the plaintiff could not recover, but the court refused to charge that, as a matter of law, the plaintiff was guilty of negligence. In this the court was right.

The judge refused to charge that the driver's negligence was chargeable to the plaintiff. In this also he was right. The relation of the plaintiff and Martin was clearly not that of master and servant; citing Quarman v. Burnett, 6 M. & W., 499; Laugher v. Pointer, 5 C. B., 572. It is settled law that the hiring of a coach does not create the relation of master and servant between the hirer and the driver.

The plaintiff's counsel relied on Thorgood v. Bryan, 8 C. B., 1, where it was held that the plaintiff was so identified with the driver of the omnibus that the negligence of the driver is sufficient to defeat the action for damages against the other party. Coltman, J., in that case says the plaintiff chose the conveyance and must be held to be chargeable with the negligence of the driver. This case has been affirmed and applied to the case of a collision of two railway trains, but it is to be observed that the judges, in citing this case, always speak of it as not having been overruled. See note to Ashby v. White, 1 Sm. Ldg.; cases Addison on Torts; Bigelow's Ldg. Ca., 726–729.

Bigelow says the only case where the so called identification has been applied is where the passenger has actively participated in the management of the vehicle. The doctrine was repudiated in Bennet v. N. J. R. R. and Tr. Co., 7 Vroom, 225. There is no distinction in this respect between a public conveyance and a private conveyance, and there is no distinction in the fact that the identification is only sought to be used to establish contributory negligence to bar an action. The relation of master and servant, if established at all, must be sufficient to create liability to third persons. It cannot be created for one purpose alone. There may be circumstances, as pointed out in Quarman v. Burnett, under which the hirer of the coach may be liable not only for contributory negligence, but also to an action from third persons; but unless he would be liable to third persons he is not chargeable with contributory negligence. Under any other doctrine the plaintiff would be forced to mount the box and take charge of the driving, and, in case of accident, would be put to an action against an irresponsible person. In the present case there were no special circumstances to show that the plaintiff took special control of the driver. The plaintiff is not chargeable with the negligence of the driver, and is entitled to recover. Judgment affirmed.

"THE most common defect I have observed in the argument of causes next to faulty 'statements' is *the misuse of reported cases.* No lawyer is justified in citing a case in his brief which he has not carefully read and studied. What does this mean? It means that without a careful reading and study of the case cited, it cannot be seen that it is applicable to the case in hand. Concerning the proper use of adjudged cases and their misuse in other respects, I may say something hereafter. But if the lawyer conscientiously pursues the course above indicated, viz., to cite no case upon his brief until he has read it so carefully that he could himself make an accurate syllabus of it, he will avoid a most prevalent and mischievous practice—the loose, careless and inconsiderate citation of cases. A citation of a case under a given proposition ought, unless distinctly otherwise stated, to be equivalent to an implied professional certificate that, in the writer's judgment, the case cited is an express authority in support of such proposition."—Judge Dillon in *Columbia Jurist.*

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IN Griffith v. R. R. Co., S. C. S. C., 19 Rep., 697, an administrator sued a railroad company for damages for alleged negligence in running its trains of cars over the corpse of the intestate, which had been placed on its track, thereby mutilating the remains and destroying the apparel in which it was clad and a silver watch on the person of deceased. *Held*, that the administrator had no property in the corpse, and could not therefore maintain the action as to the body, but that he had a property in the apparel and the watch, and as to these the action was maintainable.

The court say: "We have looked diligently through the common law reports of England, and have found no case in which the circuit courts have been appealed to in matters connected with the bodies of the dead; on the contrary, their burial, the graveyards and cemeteries in which they are entered, and the religious ceremonies observed, have been left exclusively to ecclesiastical cognizance, the civil courts universally holding, in the language of Lord Coke, that the "burial of the cadaver is *nullius in bonis*." In some of the States upon this continent, especially in Rhode Island, in Indiana, in Pennsylvania and New York, the courts, endeavoring to escape from this reproach, have held in general terms that the corpse belongs, not to the administrator, but to the next of kin, and that is as far as the cases referred to by appellant's counsel seem to go. In Pierce v. Cemetery Co., 10 R. I., 227, it was held that while a dead body is not property in the strict sense of the common law, it is *quasi* property over which the relatives of the deceased have rights which the courts will protect. In re Widening Beekman Street, 4 Bradf., 503, it was held that "the right to bury the corps and to preserve its remains is a legal right wnich the courts will protect. That such right, in the absence of any testamentary disposition, beloogs exclusively to the next of kin." In Bogert v. Indianapolis, 13 Ind., 135, it was held that the bodies of the dead belong to the surviving relatives in the order of inheritance as property. In Wynkoop v. Wynkoop, 42 Penn. St., 293, it was held "that a wife has no right or control over the body of her husband deceased after burial. The disposition of the remains of the deceased belongs, therefore, exclusively to his next of kin. That though it was her duty to bury the body, as widow, after interment her right ended." Upon what authority or established principle of the common law these decisions were founded, even to the extent of legalizing the right of the next of kin, does fully appear; but they afford no support to the position that the administrator has any control whatever, which is the question here.

We have no case in our own reports upon the subject; certainly no case bearing upon the precise subject before us, *i. e.*, the rights of the administrator. In the absence of all authority, and looking at the act which authorizes administration and defines the duties and powers of administrators, and describes the property which by operation of law becomes theirs, we are constrained to the conclusion that, so far as this action is founded upon the mutilation of the deceased by the defendant company, whether accidental, wilful or negligent, it cannot be sustained by plaintiff, and that his honor, the circuit judge, was correct in so holding. This, however, does not apply to the clothes in which the body was clad, and the silver watch upon the person; as to these the administrator was the legal owner, and his appoihtment, though made after the occurrence, reached to the death, his title commencing at that time. As to these, then, the action was maintainable, and we think that his honor was in error in not so holding. McLaine v. Elder, Brev. MSS. Rep. (2 Mill, 184); Dealy v. Lance, 2 Speer, 487."

A Curious Argument.

If a sovereign is given to a cabman for his fare, both parties believing it a shilling, and an hour later the cabman discovers the mistake and keeps the sovereign, has he stolen it? The argument of this question before the court for crown cases reserved last week afforded excellent entertainment to a professional audience. The difficulty is, that to "take and carry away *animo furandi*" is an essential part of the common law definition of larceny; and that in this case the cabman did not form a felonious intention about the sovereign when he took it and carried it away, because he then believed it to be a shilling. Before the argument had gone far it was apparent that the five judges who were hearing the case were not agreed, and while Lord Coleridge had no doubt that the sovereign was stolen, Mr. Justice Stephen was equally positive that it was not. Mr. Justice Cave further complicated matters by throwing out a suggestion that the cabman might perhaps have committed the statutory offence called larceny by a bailee. In the result the Lord Chief Justice announced that the bench was so seriously divided in opinion that there must be a further argument before the full court—that is, the whole Queen's Bench Division.—*St. James' Gazette.*

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Respondeat Superior.

The general rule of respondeat superior, as applicable to municipal corporations, is thus stated: "To establish the liability of a municipal corporation for damages resulting from the alleged negligence or want of skill of its agent or servant in the course of its employment, it is essential to show that the act complained of was within the scope of the corporate powers; if outside of the powers of the corporation, as conferred by statute (or its charter), the corporation is not liable, whether its officers directed the performance of the act, or it was done without any express direction. Smith v. City of Rochester, 76 N. Y., 506; approved in Cummins v. City of Seymour, 79 Ind., 491, opin. 496; s. c., 41 Am. Rep., 618; see also Hunt v. City of Boonville, 65 Mo., 620; s. c. 27 Am. Rep., 299; Trammell v. Town of Russellville, 34 Ark., 105; s. c., 36 Am. Rep., 1.

But even if the act be within the corporate powers, the corporation cannot be held liable unless it be also within the line and scope of the officers or agent's employment. Thus, a city is not responsible for the negligence of the city surveyor or engineer in performing work for private parties. Alcorn v. Philadelphia, 44 Penn. St., 348. So, in a case just reported it was held that a town is not liable for an injury caused by fireworks discharged by citizens, in violation of an ordinance, even though the council and officers took an active part in the celebration. Ball v. Town of Woodbine, 61 Ia., 83; s. c., 47 Am. Rep., 805; see also Cumberland v. Willison, 50 Md., 138, where a city was held not liable for the extra official act of its mayor. So it has been held in a number of cases that a municipal corporation is not liable for the trespasses or wrongful acts of its officers, though done *colore officii*, unless authorized or ratified by the corporation. Hunt v. City of Boonville, 65 Mo., 620; s. c., 27 Am. Rep., 299; Wallace v. City of Menasha, 48 Wis., 79; s. c., 33 Am. Rep., 804; 10 Cent. L. J., 147; Thayer v. Boston, 19 Pick., 511; Lee v. Sandy Hill, 40 N. Y., 442; Fox v. Northern Liberties, 3 Watts & S., 103; Perley v. Georgetown, 7 Gray, 464; Mayor v. Musgrave, 48 Md., 272; s. c., 30 Am. Rep., 458; but see Durkee v. City of Kenosha, 59 Wis., 123; s. c., 47 Am. Rep., 480, where a city was held liable for a sale of property by its officers to pay a void street assessment.—*Central Law Journal.*

AN Indiana sheriff, who must be out of his mind, replied to a demand for his prisoners, by opening fire on the mob and dispersed it.

BROKERS employed to sell, who get in with the buyer, are a delusion and snare, and while in general they get their commissions (for the facts do not usually come out until too late to stop them), they ought not to be allowed to get away with the property.

It is a wholesome rule that charges them as trustees for their principals to the extent to which they profit by the astuteness which they ought to employ for his benefit, and they should be so held without requiring evidence of actual misrepresentation or active fraud.

To engage with one interest and to serve the adverse interest is in itself sufficient to condemn the transaction.

The question is somewhat different, however, when one gives the broker an interest by agreeing to give him all the broker can get over a specified sum. Whether he can raise objection to the broker serving his own interest by turning to his advantage any such circumstance as the unexpected finding of valuable ore is another question.

Such an arrangement is certainly a very precarious protection of the interest of the seller.

IN Murphy v. Western & A. R. R. (C. C. E. D., Tenn., S. D., 1885; 23 Fed. Rep., 637), it was held that a railroad company may set apart certain cars to be occupied by white people, and certain cars to be occupied by colored people; but if it charges the same fare to each race, it must furnish substantially like and equal accommodations.

In the same case a question in regard to the motive of an act sued on was determined.

Several recent cases have held that if plaintiff shows a legal right to recover, the motive with which he brought the action is not material; as, for instance, that a foreclosure cannot be resisted upon an allegation that plaintiff's motive in bringing it was maliciously to annoy the defendant. Maurice v. Tuthill, 72 N. Y., 575; see also Frazier v. Brown, 12 Ohio St., 294.

A somewhat different rule has been applied in the case of an official act. In the above case of Murphy v. Western & A. R. R. Co., the jury were instructed that if a colored man enters a car set apart for white people, with knowledge that it is so set apart, and with the purpose of being removed from the car and train so that he may bring suit for damages against the railway comdany for such removal, the jury may consider that fact in mitigation of damages, and should not allow liberal and exaggerated compensation for his

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mental sufferings; but if no such intention appears, he may be allowed full and liberal compensation for his sufferings and other injuries, and such sum as punitive damages as the jury may think right in preventing the recurrence of the like mischief.

It certainly seems to be a sound principle that he who invites a wrong ought to be satisfied at least with actual damages.

NOTES OF RECENT DECISIONS.

Life Insurance.

Insurance by one of His Own Life for Benefit of a Stranger; Distinction Between Such Policy and Wagering Policies; Assignment of Life Policy; Insurable Interest of Assignee; Surety.—Life Insurance, unlike fire or marine insurance, is not a contract for indemnity, but is a contract to pay a certain sum of money, in the event of death.

A man may insure his own life, paying the premium himself, for the benefit of another who has no insurable interest; such a transaction is not a wagering policy.

Where the intent of the insured, at the time he took out the policy, that the insurance should be for the benefit of a friend is apparent, the mere form in which such intent is executed is not essentially material to the validity of the beneficiary's claim under the policy.

Where one has an insurable interest at the time an insurance is effected upon the life of another for his benefit, the fact that his interest ceases to exist at or prior to the death of the insured will not deprive him of the right to receive the insurance money as against the personal representatives of the insured.

A surety on an official bond has an insurable interest in the life of the obligor. His right to receive the amount of a policy on the obligor's life, issued for his benefit, is not affected by the fact that no breach of the conditions of the bond ever occurred.

A applied for a policy of insurance on his life. When he called to lift the policy, he told the company's agent that he wanted the policy transferred to B. The agent furnished him with a blank form of assignment which A then and there executed in duplicate, one being forwarded to the company and the other retained by A, who also retained the policy and paid all the premiums. Upon A's death the insurance company paid the amount of the policy to a stakeholder. In a suit to determine whether A's administrator or B was entitled to the fund:

Held, that while the assignment, as such, was invalid for want of delivery to B, yet it being apparent that A's original intention was to insure his own life for B's benefit, the form of the transaction was immaterial, and the assignment would be treated as a direction by A to pay the money to B, given simultaneously with the issuing of the policy, and with the same effect as if written therein:

Held, therefore, that B was entitled to said fund. [Scott v. Dickson, Adm'r, etc.; Sup. Court of Penn., November, 1884.]

Wagering Policy; Insurable Interest; Creditor; Brother and Sister.—Where a sister lives in the house of her brother who supports and maintains her in his family under circumstances tending to constitute the relation of debtor and creditor between them, he has such an insurable interest in her life as will support a policy of insurance taken out by him thereon. [Keystone Mutual Association v. Beaverson; Sup. Ct. of Penn., May, 1885.]

Wagering Policy; Assignee of Policy Without Insurable Interest Acquires no Title.—One having no interest, as relative or creditor, in the preservation of the life of an insured person can acquire no title, by assignment or otherwise, and payment of premiums, to the sum payable on the death of the insured. If in such case the insurance company pays him the amount of the policy, the administrator of the insured person may recover it in an action against him.

A insured her life, naming as beneficiary B, who had no insurable interest in A's life. B paid all the assessments. Immediately after A's death B assigned the said policy to C, who likewise had no insurable interest. C was recognized by the company as the assignee, and he collected the sum insured from the company. In an action by the administrator of A against C:

Held, that such a contract of insurance was not void *ab initio*; nor against public policy; but that as to B and C it was void; therefore the plaintiff was entitled to recover said sum paid by the insurance company to C. [Meily v. Hershberger; Sup. Court of Penn., May, 1885.]

Equity will not rescind an executed contract merely for inadequacy of price.

An uncle conveyed all his property to his nephew; afterwards there was a partial reconveyance and a full settlement and compromise of all disputes. *Held*, that a court of equity would not after this compel the reconveyance by the nephew of the balance of the property on the ground of alleged undue influence. [Kelly's Appeal, S. C. Penn., Leg. Int., July 31, 1885.]

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The Courts.

IN EQUITY.—New Suits.

July 16, 1885.

9533. Kaufman Meyenberg v Thornton Shinn et al. To cancel deed Com sols, Hine & Thomas.

9534. Henry J. Kintz v. Frederick W. Weber et al. Specific performance. Com sols, H. O. & R. Claughton.

July 20, 1885.

9535. Fredericka Eckart v. Arunah S. Abell et al. Injunction. Com sol, R. R. Perry.

9536. J. Forrest Manning et al. v. Diller B. Groff et al. Judg't creditor's bill. Com sol, J. J. Darlington

July 21, 1885

9537. Ann Eliza Barnard et al. v. Wm. R. Whiting. To sell. Com sol, R. Coyle.

9538. John Stewart v. Euphemia Stewart. For divorce. Com sol, C. Storrs.

9539 Esther J. Schafer v. Charles F. Schafer. For divorce. Com sol, W. A. Cook.

July 22, 1885.

9540 William W. Metcalf v. William Delaney et al. To substitute trustee Com sols, Hagner & Maddox.

9541. George M. Poizier v. Catharine Poizier. Divorce. Com sol, W. Wheeler.

9542 John H, Ketcham v. James W, Patterson. To quiet title. Com sols, Birney & Birney.

July 24, 1885.

9543. Mary H. Durant et al. v. George Burgess et al. To substitute trustee. Com sol, W. P Bell.

9544. William Friedrich v. The Washington Beneficial Endowment Association et al. Creditor's Bill. Com sols, Abert and Warner

9545. Katharine P. Nicholson et al. v. Annie P. Nicholson et al. To sell. Com sol, W. E. Edmonston.

9546. Anne F. Smith v. Albert L. Smith. For divorce. Com sol, C. A. Walker.

9547 M. D. Helm v. The Evening Critic Publishing Co et al. Creditor's bill. Com sol, N. Dumont.

July 25, 1885

9548. Mary E. Jewell v Augustus W. Jewell. For divorce. Com sols. Lipscomb and Norris

July 27, 1885.

9549. George W. Gray v. Everett P, Wheeler et al. For new trustee. Com sol, M. Ashford.

July 28, 1885.

9550. Samuel A Peugh v. Charles H. Raymond. For discovery and acct. Com sol, L. H. Pike.

9551. Mary R. Squires et al v John F. Garner et al For discovery and acct. Com sol, H, W. Garnett.

July 30, 1885.

9552. George W. Cissell v. Mary F Stone et al To substitute trustee. Com sols, Webb and Ridout,

9553. Margaret E. Dugan v. Stephen Dugan Divorce. Com sol, W. A. Cook.

July 31, 1885.

9554 Joseph A Caldwell v. George F. Ketcham et al. Acct. and receiver. Com sol, John J. Weed

9555 Sarah E. Dillow v. Frederick Dillow. For divorce. Com sol, W. G. Henderson.

9556. Andrew J. Avery v. Julia A. Johnson et al. For conveyance. Com sol, Irving Williamson.

9557. Virginia Johnson v. George H. Baldwin. Injunction. Com sol. W. Wheeler.

CIRCUIT COURT.—New Suits at Law.

July 18, 1885.

26292. The Second National Bank, of Washington, D C. v. Henry Larman. Note. $95. Piffs attys, Newton & Berryman.

July 20, 1885.

26293. Lavinia C Dundore v. Caleb C. Merritt. Note, $300. Piffs atty, M. J. Ford.

26294. Ellen I. Brawner v. Enoch F. Zell et al Note, $600. Piffs attys, Cox, Hamilton and Sohon.

July 21, 1885.

26295. Alexander Peterson v. The Washington Gas Light Co. Damages, $3,000 Piffs atty J. A. Smith

26296. Dennis Connell v. John W. Lansdale. Judg't of Justice O'Neal, $77.

July 23, 1885.

26297. Charles G. Linthicum v. Philip A. Darnielle Replevin. Piffs attys, Edwards & Barnard.

July 25, 1885.

26298. Thomas W. Jones v The Penn. R R. Co, et al. Damages, $25,000. Piffs atty, W. A. Cook.

July 27. 1885

26299. Charles A. James v. Henry Larman. Note, $80. Piffs atty, W. F. Mattingly.

26300. Wm. Byrne v. J McDowell Carrington. Judg't of Justice Walter, $60.76. Piffs atty, C, S. Bundy.

26301. Dennis O'Neal v Stilson Hutchins et al. Damages, $20,000. Piffs attys, Brown & Murdock

26302 James Doyle v. Andrew Piershynski et al. Damages, $5,000 Piffs atty, C Carrington.

July 28, 1885.

26303. Charles T. Stewart v. The Penn. R. Co. et al. Damages, $30,000. Piffs atty, W. A Cook

26304. John Wannamaker v Joseph C. McKibben. Acct, $126.82 Piffs atty, H W. Garnett.

July 30, 1885

26305. Henry G. Trader v. Lee Crandall. Acct., $202. Piffs atty, W. S Abert

26306 James S. Edwards, ex'r, v. Mason Shipman. Note, $257 69 Piffs attys, Edwards & Barnard.

July 31, 1885.

26307. Brainard H. Warner v. E. W. Brady et al. Judg't of Justice Hall, $77 05.

26308. Pitney & Bradford v. Alice A. Gibson. Acct., $158 25. Piffs attys, Abraham & Mayer.

PROBATE COURT.—Justice Hagner.

July 31, 1885.

Estate of W. R. and Henry L. James. Guardian authorized to pay for support of infants.

Estate of George H Larcombe Guardian authorized to pay $426.94 to Serial Building association.

Estate of John J. Callahan Letters testamentary issued to Mary Callahan. Bond, $500

Estate of John A. B. Leonard. Order of publication,

In re guardianship of Ida Stevens. Caroline Gates appointed Bond, $250.

In re will of Mary Clemmer. Letters issued to Edward Hudson. Bond, $3,000.

Estate of Mary C. McDonnell. Inventory returned.

Estate of David McIntyre. Answer of Martha, Emma and Sarah McIntyre filed

Estate of Maria B Linton. Will filed.

Estate of Lee Brown. Will filed.

Estate of W. T. Craig. Petition of Casandra A. Craig for letters filed.

Will of Charles McDougal. Filed for probate

Estate of Charles A. Kimmell. Appointment of O Kimmell, administrator, as to the non-compliance of Charles E Creecy with the order of May 15 last

Estate of W. S. Johnson Order directing sale of policy insurance.

Estate of Henry Iseman. Letters testamentary issued to Catharine Iseman. Bond $16 000

Estate of Joseph Trimble. Order of publication.

Estate of John Wunderlich. Letters issued to Johanna Turner. Bond, $2 000.

Estate of of Selina C Pendleton. Letters issued to Rose B. Darrell and E. C. Pendleton Bond, $4,000.

Estate of John F. Tucker Letters issued to Mary J. Dooley. Bond $2,000.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 31st day of July, 1885.

JOHN A LOUDON v. WM G FLOOD ET AL } No. 9378.

On motion of the plaintiff, by Mr. C Carrington, his solicitor, it is ordered that the defendants William G. Flood, Samuel Mason and Harriet Ann Dorsey, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B HAGNER, Justice.

True copy. Test: 31 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 31st, 1885.

In the matter of the Estate of Joseph Trimble, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by James Trimble and Mary Blakely.

All persons interested are hereby notified to appear in this Court on Friday, the 4th day of Sept. next, at 12 o'clock, m, to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court A. B. HAGNER, Justice

Test: 31 H. J. RAMSDELL, Register of Wills.

J. T. CULL, Solicitor.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 31st, 1885

In the matter of the Estate of John A. B Leonard, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by Sallie Johns Peter.

All persons interested are hereby notified to appear in this court on Friday, the 4th day of July, next, at 12 o'clock, m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

By the Court. A B HAGNER, Justice.
Test: 31 H. J. RAMSDELL, Register of Wills.
H. N SOHON, Solicitor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Thomas T. Scarff, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of July, 1885.
ANGELINA SCARFF,
ABERT & WARNER, Solicitors. 31 Executrix.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Howard Johnson, late of the District of Columbia, deceased.

All persons having claims again the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 30th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of July, 1885.
31 HENRY A. JOHNSON
ABERT & WARNER, Solicitors Administrator.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business. Letters Testamentary on the personal estate of Samuel F. Conover, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 28th day of July, 1886 next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of July, 1885.
31 SAM'L V. NILES,

THIS IS TO GIVE NOTICE:

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Charles Clark, late of the District of Columbia, deceased

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of July next: they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of July, 1885.
JOHN J. WILMARTH,
31 Administrator.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business. Letters of Administration c. t. a. on the personal estate of James Torphy, late of the District of Columbia, deceased

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 22d day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of June, 1885
BENJAMIN F. RITTENHOUSE,
GORDON & GORDON, Solicitors. 31 Administrator c. t. a.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 31st day of July, 1885.

ANDREW J. AVERY v. JULIA A. JOHNSON ET AL } No. 9656.

On motion of the plaintiff, by Mr. Irving Williamson, his solicitor, it is ordered that the defendants Julia A. Johnson and William Johnson, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
True copy. Test: 31 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John Wunderlich, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 31st day of July, 1885.
JOANNA TURNER.
JUDSON T. CULL, Solicitor. 31 Admisintratrix.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

JOHN H. KING et al. v. WILLIAM WATSON et al. } Eq 9441. Docket 24.

Jesse H. Wilson and George W. King, trustees herein, having reported the following sales, to wit:

To John F. Dyer, lot 12 in square 15, Washington, D. C., for $4,724.84

To James Manogue, parts of lots 8 and 9, in the "Slip," in Georgetown, D. C., for $3,125.00.

To Jesse V. N. Huyck, part of a tract of land called "White Haven," in Washington County, for $1,141.28.

Being all the property in this cause decreed to be sold, and in the aggregate amounting to the sum of $8,991.12.

And which sales and the property sold are more fully described in said trustees' report, and the proceedings herein.

It is, this 28th day of July, A. D. 1885, ordered by the Court, on motion of complainants' solicitor, that said sales be confirmed, unless cause to the contrary be shown on or before the 1st Tuesday of September, 1885.

Provided a copy of this order be published in the Washington Law Reporter, once a week for three consecutive weeks before said day.

A. B. HAGNER.
A true copy 31 Test: R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

ELIZABETH M. GULICK v. MARY E GULICK et al. } 9454. Eq. Doc. 24

Upon consideration of the trustee's report of sales, it is, by the Court, this 29th day of July, A. D. 1885, ordered, adjudged and decreed, that the sales so reported stand ratified unless sufficient cause to the contrary be shown to the Court on or before the 1st day of September next.

Provided a copy of this order be published once a week for three successive weeks prior to said last mentioned day.

The report shows amount of sales to be $23,388 43-100.

A. B. HAGNER.
A true Copy. Test: 31 R. J MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 22d day of July, 1885.

JOHN H. KETCHAM v. JAMES W. PATTERSON. } No. 9541. Eq. Doc. 25.

Bill to quiet title.

On motion of the plaintiff, by Messrs. Birney & Birney, his solicitors, it is ordered that the defendant, James W. Patterson, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 30 R. J. MEIGS, Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 17th, 1885.

In the case of Andrew C. Bradley, Administrator of Jessie M. Farnum, dec'd, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 7th day of August, A. D. 1885, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

Test: 29 H. J. RAMSDELL, Register of Wills

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Holding a Special Term for Orphans' Court Business. July 17th, 1885.

In the case of J. Holdsworth Gordon, Executor of Thornton Yates, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 7th day of August, A. D. 1885, at 11 o'clock, a. m., for making payment and distribution under the Court's direction and control; when and where creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

Test: 29 H. J. RAMSDELL, Register of Wills

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 17th, 1885.

In the case of Anson S. Taylor, executor of Isaac Bradley, deceased, the executor aforesaid has, with the approval of the court, appointed Friday, the 14th day of August, A. D. 1885, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 29 H. J. RAMSDELL, Register of Wills

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 17, 1885

In the case of Henriette C. Metzerott and Samuel Cross, Executors of William G. Metzerott, dec'd, the Executors aforesaid have, with the approval of the Court appointed Friday, the 7th day of August, A. D. 1885, at 11 o'clock, a. m., for making payment and distribution under the court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 29 H. J. RAMSDELL, Register of Wills.
ENOCH TOTTEN and GORDON & GORDON, Solicitors.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 21st day of July, A. D. 1885.

ANNA ELIZA BARNARD et al., Complainants,
v.
WILLIAM RUSSELL WHITING and ANNA MCHENRY BARNARD, Defendants
} Equity. No 95 7

The object of the bill filed herein, is the sale of parts of lots 1 and 2 in Square 167 in the City of Washington, and distribution of the proceeds of such sale among the complainants and defendants.

On motion of the complainants, by Mr. Randolph Coyle, their solicitor, it is by the Court ordered that the defendant, William Russell Whiting, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default

By the Court. A. B. HAGNER, Justice.
True copy. Test: 29 R. J. MEIGS, Clerk.
By A. M. CLANCY, Assistant Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Holding a Special Term for Orphans' Court Business, July 17th, 1885.

In the matter of the Will of Robert M. Reynolds, late of the District of Columbia, deceased

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Orpha W. Reynolds.

All persons interested are hereby notified to appear in this court on Friday, the 7th day of August next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 29 H. J. RAMSDELL, Register of Wills.
FRANKLIN H. MACKEY, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

HENRY CLARK ET AL.
v.
HENRY HOHMAN ET AL.
} 9838 Eq Doc 24.

The trustee, Randall Hagner, having reported to the Court that he has sold the real estate in the proceedings in this cause mentioned, to wit, all of original Lots six, seven and eight, in Square west of Square numbered six hundred and ninety-five, on the ground plat or plan of the city of Washington, in the District of Columbia, to E. Kurtz Johnson, at and for the sum of $7606 48, and that the said purchaser has fully complied with the terms of sale:

It is, therefore, this 17th day of July, A. D. 1885, ordered, that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 17th day of August, A. D 1885

Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said last named day.

A. B. HAGNER, Asso. Justice.
A true copy. Test: 29 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 17, 1885.

In the matter of the Estate of Charles King, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration c. t. a. on the estate of the said deceased has this day been made by Elizabeth King.

All persons interested are hereby notified to appear in this court on Friday, the 7th day of August next, at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 29 H. J. RAMSDELL, Register of Wills.
M. G. EMERY, JR., Solicitor

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 16th day of July, A. D. 1885.

ELEANOR THOMPSON
v
SARAH J. MUSSER et al.
} No 8774. Eq. Doc. 23.

Ordered that the sale made and this day reported by Reginald Fendall, trustee for the sale of the real estate in this cause mentioned, be ratified and confirmed unless cause to the contrary be shown on or before the 17th day of August, A. D 1885

Provided a copy of this order be inserted in the Washington Law Reporter once in each of three successive weeks before said day.

The report states that the property sold for $6,500.

A. B. HAGNER.
A true copy. Test 29 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 14th day of July, 1885.

CHAS. C. COOMBS
v
HATTIE F. COOMBS
} No. 9524. In Equity.

On motion of the plaintiff, by Mr. Chas. Thompson, jr., his solicitor, it is ordered that the defendant, Hattie F. Coombs, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 29 R. J. MEIGS, Clerk.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscribers, of Port Tobacco, Md., and Washington, D. C. have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration W. a. on the personal estate of Mary C. McDonnell, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscribers on or before the 16th day of July next; they may otherwise by law be excluded from all benefit of the said estate

Given under our hands this 16th day of July, 1885

F. MARCELLUS COX,
30 GEORGE E. HAMILTON.
Administrators w. a.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

LENA HOFFMAN v. WILLIAM THOMA et al. } No. 9408. Equity Doc. 24.

Benjamin F Leighton, trustee in this cause, having reported a sale of all the real estate and premises described in these proceedings to one Robert Reyburn, jr., for the sum of $1650, it is this 25th day of July, A. D. 1885, ordered that said sale be finally ratified and confirmed unless cause to the contrary be shown on or before the 1st day of September, A. D. 1885.

Provided, that a copy of this decree be published in the Washington Law Reporter, once a week for three successive weeks before that day.

By the Court.
A true copy. 30 Test: R. J. MEIGS, Clerk

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 22d day of July, 1885.

JOHN STEWART v. EUPHEMIA STEWART. } No. 9538 Equity Docket. 25.

Application of divorce on the ground of desertion.

On motion of the plaintiff, by Mr. C. Storrs, his solicitor, it is ordered that the defendant, Euphenia Stewart, cause her appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
True copy. Test: 30 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 8th day of July, 1885.

CHARLES A. ELDREDGE v. ELIJAH K. BRUCE. } No. 26,265. Law.

On motion of the plaintiff, by Mr. R. B. Lewis, his attorney, it is ordered that the defendant, Elijah K. Bruce, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. W. S COX, Justice
True copy. Test: 28 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, sitting in Equity. July 6, 1885.

SAMUEL A. PEUGH, Complainant, against HENRY S. DAVIS, Defendant. } 1713. Eq. Doc. 9.

Henry E. Davis, the trustee herein appointed by the Court in the above entitled cause to make sale of squares numbered 910 and 911 in the City of Washington and District of Columbia, having reported sales by him of the said premises as follows, to wit: Lots 2 and 3, square 910, to Oella Chappel, for $884 17; lots 1 and 3, square 911, to Thomas Potee, for $4360.50; and lots 1, square 910, and 2, 4, 5, 6, 7, 8, 9 and 10, square 911, to Henry S. Davis, for $5416 90—the aggregate amount of said sales being $10,661.57;

It is, this 6th day of July, A. D. 1885, ordered that the said sales be ratified and confirmed, unless cause to the contrary be shown on or before the 6th day of August, A. D 1885.

Provided, a copy of this order be published once a week for three successive weeks, in the Washington Law Reporter before the said 6th day of August, A. D. 1885

A. B. HAGNER.
A true copy. Test: 28 R. J MEIGS, Clerk.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Leonora A. Ellis, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of July, 1885.

HORATIO BROWNING,
EDWARDS & BARNARD, Solicitors. 29 Administrator.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Richard T. Merrick, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of July, 1885.
29 MARTIN F. MORRIS, Executor.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Nannie Merrick, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 18th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of July, 1885.
29 MARTIN F. MORRIS, Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 15th day of July, 1885

HARRY W. GREEN ET AL. v. EDWARD I. GREEN ET AL. } No. 9257. Eq. Docket 24.

On motion of the plaintiffs, by Messrs. Knott & Ennis, their solicitors, it is ordered that the defendants cause their appearance to be entered herein on or before the first rule-day, occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B HAGNER, Justice.
True Copy Test: 29 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. The 10th day of July, 1885.

GEORGE CALLAGHAN v. MARY J. O'FLANNIGAN et al. } 9243. Eq. Doc. 24.

On hearing the report of James Fullerton, trustee, it is, this 10th day of July, A. D. 1885, ordered that the sale reported by said trustee, and the expenses thereof, be confirmed and allowed, without reference to the Auditor, unless cause to the contrary be shown to this Court on or before the 10th day of August next.

Provided, that a copy of this order be published in the Washington Law Reporter once a week for three weeks before said 10th day of August, 1885.

The report states the amount of sale and interest on deferred payments to be $2141.20.

A. B. HAGNER.
A true copy. Test 28 R J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Mason Campbell, late of the District of Columbia deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of July, 1885

MARY A. CAMPBELL,
29 Executrix, 1115 Mass. Ave., n. w.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 22d day of July, 1885.

WILLIAM W. METCALF
v.
WILLIAM DELANEY, C. H. HOLDEN and others. } No. 9540.

On motion of the plaintiff, by Messrs. Hagner & Maddox, his solicitors, it is ordered that the defendants, William Delaney and C. H. Holden, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 30 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Thomas I. Middleton, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 22d day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of July, 1885.

30 B. F. LEIGHTON, Administrator.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of John E. Thompson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 3rd day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 3d day of July, 1885

MARY E. THOMPSON,
28 Administratrix c. t. a.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Sarah E Wilson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of July, 1885.

THEODORE D. WILSON,
D. J. PARTELLO, Solicitor. 28 Executor

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Samuel, alias Samuel H., Hill, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of July, 1885

GEORGE E. JOHNSON,
28 Executor

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, and Princeton, N. J., respectively, have obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of William McLean, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscribers on or before the 6th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 6th day of July, 1885

SAM'L S. SHEDD,
WILLIAM H. ROBERTS.
JAS. G. PAYNE, Solicitor. 28

Legal Notices.

THIS IS TO GIVE NOTICE,

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Emily Beale, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23rd day of July next; they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 23rd day of July, 1885

30 JAMES H. SAVILLE, Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 24th, 1885.

In the matter of the Estate of Eleanor Miller, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Charles Miller, who prays that Horatio Browning may be associated with him as co-administrator.

All persons interested are hereby notified to appear in this court on Friday the 14th day of August next at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 30 H. J. RAMSDELL, Register of Wills.
EDWARDS & BARNARD, Solicitors.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of George M. Schaefer, late of the District of Columbia, deceased

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 17th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of July, 1885.

KATHARINE SCHAEFER,
H. R. WEBB, Solicitor 30 Administratrix.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of Michael Caton, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of July, 1885

MARY CATON,
CHARLES A. ELLIOT, Solicitor. 30 Administratrix c.t.a.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William Bowles, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 17th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of July, 1885.

JAMES BELLEW.
HOSEA B. MOULTON, Solicitor. 30 Administrator.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia have obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration, c. t. a., on the personal estate of Gurden Snowden, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscribers on or before the 30th day of June next; they may otherwise by law be excluded from all benefit of the said estate,

Given under oer hands this 30th day of June, 1885.

JAMES H. SMITH,
WILLIAM B. WEBB,
28 Administrators c. ta. a.

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Washington Law Reporter

WASHINGTON - - - - - - - - August 8, 1885

GEORGE B. CORKHILL - - - EDITOR

WE have received a copy of a pamphlet published by Messrs. Alfred Mudge & Co.. No. 24 Franklin street, Boston, Mass., which treats of the methods of changing the constitutions of the States, especially that of Rhode Island. An appendix is added. The pamphlet is well worth careful reading, and will be found to contain some very interesting matter. It is a noticeable feature that this is the only discussion of the subject with relation to American States to be found in print in this country.

WE have frequently seen such extracts as the following in print:

"Under the Mexican law a creditor can have a debtor arrested on the day when the debt falls due. The prisoner is chained to a post five days, guarded by an officer. At the end of the time, if the money is not forthcoming, the man's labor is sold to the government for forty cents a day for as many days as will be necessary to discharge the obligation. The miserable debtor is sent to the silver mines, where he is chained to a gang of felons and compelled to work underground. He sleeps underground and never sees daylight again until he is restored to freedom."

This is altogether wrong. In Hall's Mexican Law, p. 93, Constitution of Mexico, Art. 17, we read: "No one can be arrested for debt of a purely civil character." This is the law of Mexico on the subject of arrest for debt of a civil character. It differs materially from that deduced from such extracts as the above.

THE preservation of the common law forms in certain localities in this country is attracting some criticism. Lord Chief Justice Coleridge, when he visited this country, learned with surprise that the old common law forms were still adhered to in some States; and when he visited the courts themselves remarked that he looked with awe upon a common law court as something ancient and antique and which was now wholly unknown in England. Mr. Napier says: "One of the principal objects for which the judicature acts were passed, was to do away with the anomalies arising from the fact that equitable rights and interests were only very partially recognized and very sparingly enforced in common law courts. In order to support a claim or defend a right based upon some equitable ground, a litigant was usually compelled to seek the aid of a court of chancery, and this although the matter in question was already the subject of a common law action.

IT seems rather unfortunate that the letting of the contract for the photo-lithographing of the Patent Office drawings has given occasion to some criticism. The action of any Department, upon awarding a contract open to public competition, should be so correct as to disarm criticism or suspicion.

SIMEON HARRIS, a lawyer who lately made himself conspicuous in Cincinnati for libel suits against newspapers, running up into the millions, and who threatened cowhiding several editors and reporters, was, at the instance of his father and the affidavits of Drs. Marcus and Eichberg, declared insane by the probate court of Hamilton county, and taken to the College Hill Sanitarium.

THE warm weather appears to have no effect on the Police Court. Judge Mills has been sitting later than usual this week.

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Supreme Court District of Columbia

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

JEREMIAH COSTELLO *vs.* CHARLES KNIGHT.

LAW. No. 23,255.

Decided May 11, 1885.
The CHIEF JUSTICE and Justices WYLIE and JAMES sitting.

1. A preliminary examination and discharge of the accused by an examining magistrate is such an ending of the proceedings as will support an action for malicious prosecution, although the accused was afterward indicted by the grand jury for the same alleged offence after the bringing of the civil action.
2. After his examination and discharge by the Police Court the accused brought a civil action against the prosecutor to recover damages for malicious prosecution. Pending that action the grand jury indicted the accused for the same alleged offence, and on trial he was acquitted. The civil action then coming on for trial, the plaintiff, against the objection of the defendant, offered in evidence the record of the indictment and acquittal which was admitted by the court. *Held*, Error, because there was no evidence that the defendant had promoted or originated the proceeding by indictment. Had that been shown it would have been admissible for the purpose of proving malice. The fact that his name was on the back of the indictment was not of itself any proof of malice.
3. On a trial for malicious prosecution the indictment is *res inter alios* so far as concerns the matter of fact which it goes to establish. It is evidence of the fact of a prosecution and of the fact of an acquittal, but as between the plaintiff and defendant it does not determine the guilt or innocence of the accused.
4. It is for the jury to determine the facts, but it is for the court to say whether those facts constitute want of probable cause.
5. It seems, per James, J., that the discharge by the examining magistrate is *prima facie* evidence of want of probable cause.

THE CASE is stated in the opinion.

FRANKLIN H. MACKEY for plaintiff.

T. A. LAMBERT for defendant.

Mr. Justice JAMES delivered the opinion of the court.

This was a suit for malicious prosecution. We gather from the bill of exceptions on the record brought up, without any testimony, that the defendant, Knight, made complaint before the Police Court, charging the plaintiff, Costello, with the forgery of a certain instrument. On the hearing of that complaint, Costello was discharged and released from custody. Thereupon he brought an action against Knight for malicious prosecution. Afterwards an indictment was found against Costello, which indictment, it was admitted, was for the same alleged offence. On the trial of that indictment Costello was acquitted. A few days after that acquittal the civil action for malicious prosecution came on for trial, and, in the course of the trial, the record of the indictment, of a proceeding which had been commenced and ended between the bringing of the civil action and its trial, was offered in evidence, objected to and admitted. In reference to the effect of that indictment the court charged the jury, or, I should say, instructed them upon the effect, in these words:

"The jury are bound by law to hold that the plaintiff is not guilty of the forgery with which he was charged, if he was acquitted by the verdict of a jury."

A verdict and a judgment for five hundred dollars damages was recovered against Knight in this civil action, and he has taken his appeal here upon six bills of exceptions.

Changing the order of the propositions as presented in the bills of exceptions, we will notice the prayers of the defendant first. Substantially he asks the court to instruct the jury that this complaint on the preliminary examination, although it ended in the discharge of the prisoner, was not the ending of a proceeding in such a sense as to entitle the defendant in that prosecution to bring his action for malicious prosecution on the general principle that the prosecution must have ended before the action for damages arising from it can be maintained.

It was very strenuously urged that a prosecution before an examining magistrate contemplates in law that there may be a further proceeding, and in legal contemplation it should not be regarded as having come to an end with a discharge on the preliminary examination, because it is always competent to lay the case before the grand jury and to have an indictment, the importance of which was illustrated, as the defendant insisted, by the fact that an indictment was found.

There is abundant authority, however, to support the right to bring an action for malicious prosecution where the case was one of prosecution by complaint be-

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fore an examining magistrate which ended in the discharge of the prisoner. The reasons for that are apparent on principle. This action for malicious prosecution is brought upon the theory that there has been an abuse of the processes of the law. That is a process of the law which can be abused just as well as an indictment can. And, therefore, a preliminary examination and discharge constitutes on principle a sufficient cause for the action. We need refer only to one case, that of Secor v. Babcock, 2 John., 204, where a party was arrested and brought before a magistrate on a charge made by the defendant in an action for malicious prosecution, and he was discharged; the action was maintained.

As to the assumption that it was only a part of a process that might go on, we have only to say that there is no connection between the two proceedings. If he had been held to answer before a grand jury the proceeding would have been one connected one, and it would not have been at an end. But here he was discharged and the proceedings before the grand jury were necessarily, in legal effect, entirely independent. There was good ground, therefore, to bring this action so far as the conclusion of the proceedings is concerned on which the action is brought.

The court, however, against the objection and exception of the defendant, admitted the record of the indictment found after this civil action had been brought. All that is shown is that an indictment, on the back of which the defendant Knight appears as one of seven witnesses, has been found against this same party for this same offense.

It must be shown that this defendant had some connection with that indictment, or it is wholly irrelevant, and that should appear in the bill of exceptions. It does not appear by his name being simply on the back of the indictment. He may have been summoned there *in invitum* and as one of seven witnesses, and we are not to assume that he was the prosecutor; he must be connected with this prosecution as the prosecutor.

In the English cases that fact would be known perfectly well, because they have a prosecuting witness. We have none; nobody is the prosecuting witness here; he is simply a witness. His proceedings could be shown *aliunde*; they could be shown, it appears from the authorities, even by the testimony of a grand juror to show what he did. But it does not appear by the simple introduction of this record that this man, as one of the witnesses, presumably brought there at the instance of the Government, had anything to do with promoting this prosecution. It is not proper that it should be introduced against him for the purpose of proving malice, unless he appears to have been the originator of the proceeding itself. In the argument it was frankly admitted that the only evidence was the record with this indorsement on the back of it. If he was shown to be the promoter or originator it might be evidence of malice in bringing a groundless action, because both elements must appear, that there is a want of probable cause and that, as a matter of fact, it was a malicious proceeding.

In dealing with this evidence, consisting of the indictment, the court instructed the jury that they were bound by law to hold that the plaintiff was not guilty of the forgery. This indictment is *res inter alios* so far as concerns the matters of fact which it goes to establish. It is evidence of the fact of a prosecution and of the fact of an acquittal. But whether the party ought to have been acquitted, whether he was guilty or innocent, it does not determine as between these two parties; and even if it were *prima facie* evidence, this defendant had clearly a right to contest that fact. But the court cut him off from it, and held that they were bound to hold that he was absolutely innocent, not of the crimes charged against him in the indictment, but on the preliminary examination. It might be said it would have no particular effect. Clearly it was an error, and its tendency was, in our opinion, to aggravate the damages. The jury could make no other use of it than to hold that a man absolutely innocent had been causelessly prosecuted, and therefore to award higher damages.

There is one other ruling which we think was erroneous. The court instructed the jury that "the length of time that elapsed between the alleged discovery of the forgery by the defendant and the date

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of the arrest, may be considered by the jury in determining the question of malice and the want of probable cause."

The jury is authorized to determine what the facts are, but the court should determine what is probable cause, and this instruction submitted that question to the jury erroneously as we think. This court has so held on this very question in the case of Coleman v. Heurich, 2d Mackey, 189.

I might add a single remark in regard to a matter that was outside of the record but was discussed. It was claimed that the discharge ordered by the police judge was not *prima facie* evidence of want of probable cause. There has been some conflict of authority on that point, but there is very good authority for saying that it is *prima facie* evidence, the principle being very well laid down by Hall, J., in the case of Bostick v. Rutherford, 4 Hawkes (N. C.) Reports, p. 83:

"In the incipient stage of a prosecution before an examining magistrate much less grounds of suspicion will induce him to bind over the accused for further hearing than will warrant either the grand jury to find a true bill or the petit jury to convict, and when the accused is discharged because a sufficient ground of suspicion has not been established against him, I can see no reason why such discharge should not furnish *prima facie* ground for an action against the prosecutor."

I ought to remark here, however, that I do not commit the court to any decision on that subject; I speak only for myself. In a Massachusetts case there was another question raised about it, but I found it chiefly related to the effect of a conviction. The North Carolina doctrine related to the peculiar effect of the committing magistrate having found that there was not even ground to subject the party to an inquiry, and I am not sure that it is not fair ground for saying, as between the parties, that it is evidence, not conclusive at all, but evidence that there was no ground to bring an action. That, however, is my own personal view.

The case is remanded for a new trial.

THE wish to be cured is, of itself, an advance to health.—SENECA.

Check Holder versus Bank.

A question in respect to the right of a holder of a bank check was determined in Pease v. Landauer, 22 N. W. Rep., 847.

The drawers of a check mailed it to the payee, charged him with the amount and credited the bank, they having at the time a sufficient deposit to pay it. The next day, and before its actual payment, an action was commenced to dissolve the partnership of the drawers; a receiver was appointed and notice given to the bank. The bank accordingly declined to pay the check to the payee.

The court below ordered the bank to pay the money to the receiver and this decision was appealed from.

The appellate court, following New York cases, held that the payee was entitled to the amount.

Taylor, J., in delivering the opinion of the court, says:

"It will be seen from the foregoing statement of facts that the question whether the holder of a check can maintain an action at law against the bank upon which it is drawn, to recover the amount thereof, upon a refusal of payment on presentation, the drawer of the check having a deposit account in such bank to his credit for an amount equal to or in excess of the amount of the check at the time of presentation, is not involved in this case. Nor do we think the other question is involved, viz., whether the drawer of the check may lawfully, as between himself and the bank, direct the bank to refuse payment of his check drawn upon his account; or, in other words, stop payment of his check before presentation, so that the bank, though willing, would have no authority in law to pay the same on presentation. For the purposes of the consideration of this appeal, it may be admitted that the decided weight of authority is in favor of the proposition that no action at law can be maintained by the check holder against the bank for a refusal to pay the same on presentation, and that the drawer may, before presentation, stop payment, so that the bank would have no legal authority to pay the same. The argument upon these questions, upon both sides, is clearly and ably stated by Mr. Morse in his work on Banks & Banking. 2d ed., 29, 35, 258, 263, 265, 266–275, 302–304, 525–538 and see cases cited.

"It seems to us that the real question presented in this case is whether, in equity, as between the holder of a check for value and the drawer, the bank being indifferent as to whether the amount due to the drawer shall be paid to him or the check holder, the check

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holder should be paid in preference to the drawer. The receiver in this case stands in no better position than the firm who drew the check; he stands in its place. And, for the purpose of this case, we must treat it as though the firm who drew the check was still in existence. Coates v. First Nat. Bank of Emporia, 91 N. Y., 20–26; 2 Story Eq. Jur., 10th ed., sec. 1228; Burrill Assignm, 2d ed., 483; Hawks v. Pritzlaff, 51 Wis., 160; s. c., 7 N. W. Rep., 303; Estabrook v. Messersmith, 18 Wis., 551; High on Rec., sec. 495; Van Alstyne v. Cook, 25 N. Y., 489; Kerr on Rec., 183–185.

* * * * * * *

"As between the holder of a check for value and the drawer thereof, the bank npon which the check is drawn, standing indifferent, and the drawer having an account to his credit in the bank sufficient to pay the same, is the check holder entitled in equity to have the money paid to him to the amount of his check, or may the drawer arbitrarily stop its payment and compel the bank to pay the money to him? As a question of morality, there can be no doubt as to the injustice of permitting the drawer to prevent the payment of his check. When he gave the check to Pease it was with the implied, if not express assurance that he had a credit at the bank upon which his check was drawn, sufficient to pay it, and that the bank would pay it on presentation, and that he would not himself do any act to prevent the bank from paying the same on presentation. Without this express or implied assurance on the part of the drawer of the check, it cannot be presumed Mr. Pease would have taken it upon the settlement of his claim against the drawer. Relying upon this assurance on the part of the drawer, he received the check, and it seems to us very clear that upon equitable principles the drawer is estopped from stopping its payment except for some good cause, and that if he does so arbitrarily he is guilty of a fraud which a court of equity will not sanction. But in this case the drawer did something more than merely giving his check to Pease for the amount due him; he charged Pease with the amount of the check and credited the bank with the payment thereof, and such charge and credit remains on the books of the firm apparently up to the present time. He has, therefore, so far as he could without the consent of the bank, appropriated so much of the debt due him from the bank as is necessary to the payment thereof, to such payment; and, the bank not objecting to such appropriation, there can be no equity in now allowing the drawer of the check to withdraw such appropriation without showing some reason for so doing. The bank not objecting, we think it is the plain duty of a court of equity to direct the payment of the check out of the funds in the bank to the credit of the drawer.

"Upon this question courts have differed in opinion, but we think both reason and authority are in favor of the rule above stated. Risley v. Bank, 83 N. Y., 318–328; Coates v. Bank, 91 N. Y., 20, 29; Walker v. Seigel, 2 Cent. L. J., 508; German Savings Inst. v. Adae, 8 Fed. Rep., 106; Wheatley v. Strobe, 12 Cal., 92–97; Harker v. Anderson, 21 Wend., 372–381; Exchange Bank v. McLoon, 73 Me., 498; Bell v. Alexander, 21 Grat., 1–6; In re Brown, 2 Story C. C., 502–519; Yeates v. Groves, 1 Ves., Jr., 281; Lett v. Morris, 4 Sim., 607; Pope v. Huth, 14 Cal., 407; 2 Daniel Neg. Inst., sec. 1638; 1 Daniel Neg. Inst., sec. 23; Morse on Bank., 459, 474; Byles Bills, 7th ed., 14 and note; 1 Story Eq. Jur., 1049; Story Prom. N., sec. 498, note 3. These authorities, we think, fully establish the rule that, as between the drawer of a check and the holder thereof for value, the drawing and delivery of the check operates as an equitable assignment of the account or fund upon which it is drawn, to the amount of the check, and, as a consequence, such equitable assignment is binding upon the drawer, and he cannot avoid it except for some good cause."—*N. Y. Daily Registr.*

New York Oleomargarine Statute.

In the case of the People v. Marx, in the *Albany Law Journal*, the Court of Appeals of New York has held the oleomargarine statute unconstitutional. It is entitled an act to prohibit the manufacture and sale of impure and imitation of dairy products, and reads as follows: "No person shall manufacture out of any oleaginous substances, or any compound of the same, other than that produced from unadulterated milk, or of cream from the same, any article designed to take the place of butter or cheese produce from pure, unadulterated milk or cream of the same, or shall sell or offer for sale the same as an article of food. This provision shall not apply to pure skim milk, or cheese made from pure skim milk. Whoever violates the provisions of this section shall be guilty of a misdemeanor, aod be punished by a fine of not less than $100 nor more than $500, or not less than six months' or more than one years' imprisonment for the first offence, and by imprisonment for one year for each subsequent offence." The opinion of the court was delivered by Rapallo, J., all the judges con-

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curring. The grounds of constitutional objection to the law are stated shortly in the following words: "The law attempts to prohibit the sales of any articles intended to take the place of butter. This prevents competition and places a ban upon progress and invention. It evades the rights both of person and property guaranteed by the constitution. The sale of a substitute for any article of manufacture is a legitimate business, and, if effected without deception, cannot be arbitrarily suppressed. This act is not aimed at deception, but goes further, and in effect creates a monopoly destructive of rights protected by the Constitution both of the State and the United States."

The statute is substantially the same as that passed in New Jersey, May 5, 1884 (P. L., 289) and amended March 18, 1885. The decision therefore bears directly upon our statute and will have great weight with our courts.

There are decisions in Missouri sustaining a statute almost identical with this in New York. State v. Addington, 12 Mo. App., 214, and S. C. affirmed 77 Mo., 110. Hough, C. J., dissenting, and Mr. Justice Miller, of the U. S. Supreme Court, accepted the statute as constitutional in the Missouri circuit In re Brosnahan, 18 Fed. Rep., 62. See 21 Cent. L. J., 24. It is probable, however, that the authority and the reasoning of the Court of Appeals of New York will prevail in New Jersey, and that our statute will fail with that of New York, and indeed, it is as well that it should, for it was only passed to prevent New Jersey from being used as an asylum for the manufacturers that were driven out of New York, and if the manufacture is resumed in New York, to prevent it here would no longer protect our dairymen. The consumers of butter will have to take care of themselves, and if they cannot tell the difference between real butter and imitation they need not be distressed if they eat the imitation instead of the real, especially if the price of both is reduced by the increase of product.—*N. J. Law Journal.*

Fellow Servants.

In the McIntyre Street R. R. Co. v. Bolton (13 Weekly L. Bul., 581; s. c. to appear in 42 Ohio St.) the plaintiff was a passenger on defendant's street railroad, on a car northward bound. The railway was a single track, with occasional sidetracks for the passage of cars moving in opposite directions. The northbound car having been drawn beyond the side track, where it was to have met the southbound car, it became necessary to push it back to the side track, so that the cars could pass and each proceed to its destination. At the request of the driver of the northbound car, the plaintiff assisted him in pushing the car back to the side track. While so engaged, without fault on his part, he was injured by the carelessness of defendant's driver on the southbound car.

Held, That the plaintiff did not engage in the service of defendant as a mere volunteer. Under the circumstances the plaintiff could not be considered as a fellow servant with the driver of the southbound car.

McIlvaine, J., says it does not follow that, under all circumstances, a person who assists the servants of another in the discharge of their duties, without employment by the master, is to be regarded as voluntarily assuming the relation of a fellow servant, or the risks pertaining to that relation. To illustrate, suppose a servant in driving his masters' team on the highway founders in such a manner as to prevent the use of the highway by others for the time being. Another person, who is thus impeded in the use of the road, assists the servant, either with or without request, to remove the impediments to travel from the highway. Such other person does not thereby become the fellow servant of the driver. Indeed, in no just sense, has he voluntarily entered the service of his master.

Supreme Court of Pennsylvania.

GREGORY'S APPEAL.

The purchaser at sheriff's sale of the interest of a partner in the personal property of the firm, is not thereby entitled to take possession of any portion of the property. All he acquires is the right to an account, and he is not entitled to anything until the firm debts are paid.

Appeal from the decree of the Court of Common Pleas of Huntingdon county.

PAXSON, J.—This contention arises from the distribution of the fund in the hands of the receiver of the firm of B. Green & Coy, raised by him from the sale of partnership property of said firm.

The auditor, after allowing certain claims for fees, costs, expenses, rent, etc., which are not disputed, distributed the balance in the hands of the receiver, first, to certain executions against the firm which had been stayed by order of court, the lien of which had been preserved by said order, and second, to the general creditors of the firm *pro rata*. To this distribution the appellant excepted in the court below, and her exceptions having been dismissed there she has appealed to this court.

The firm consisted of Barton Green and Lewis L. Gregory. Green executed an as-

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signment of his individual property for the payment of his individual creditors. The deed of assignment makes no mention of partnership property or partnership debts. The most that can be claimed for it as respects the partnership, is that it passed his interest therein subject to the debts of the firm. Certain executions were then issued against Lewis L. Gregory by his individual creditors. These executions were restrained by the court below to his right, title and interest in the firm, and nothing more was sold thereunder. Afterward, upon a bill in equity filed by the assignees for creditors of Green, the court appointed a receiver, who took possession of the partnership property and assets, the proceeds of which are now being distributed.

The appellant has no ground on which to claim the *corpus* of the partnership property or its proceeds. The purchaser at a sheriff's sale of the interest of a partner in the personal property of the firm, is not thereby entitled to take possession of any portion of the property. All he acquires is the right to an account, and he is not entitled to anything until the firm debts are paid. Durborrow's Appeal, 3 Norris, 404.

The appellant bought the interest of Gregory for $50. What she paid would go to the execution under which the interest was sold. What she bought was the right to any proceeds of the partnership property after the firm debts were paid. Green, the other partner, has an equity, which forbids the application of his share of the firm property to the payment of his partner's individual debts. It is said, however, that Green may waive this equity. If we concede this it does not help the appellant. There has been no such waiver; on the contrary, Green's assignees are in court, and have filed a bill to prevent such an application of the firm property.

A voluntary assignee stands upon the foot of his assignor. The object and legal effect of the assignment, so far as it affects the partnership, was to pass the assignor's interest in the firm, after the payment of the firm's debts, to his individual creditors. The assignee has the same right to enforce the equities of the assignor that the latter would have if no assignment had been made. The case does not require elaboration.

The decree is affirmed and appeal dismissed at the cost of the appellant.

THE precepts of the law are these: to live correctly, to do an injury to none, and to render to every one his own.—INST. JUSTINIAN.

PIERCE V. COOLEY.

Supreme Court of Michigan. April, 1885.

Sale: Delivery; Condition; Fire.—Where a machine is sold, not to be accepted unless it works to the satisfaction of the vendee, and is accidently destroyed in the interval in the possession of the vendee, the loss must be borne by the vendor.

Error to Ingham.

Action to recover the price of a spoke-dressing machine. The defendants claim that they held it merely on trial, and that it was accidently destroyed by fire. The defendants appealed from the judgment below.

CAMXBELL, J., in delivering the opinion of the court, said: The machine had been in defendants' wagon-shop in Lansing, and partially tried, prior to December, 1883, but had not worked well. Plaintiff's wished them to give it a further trial with a different method of gearing, which would make it work better. A written instrument was signed by both parties, whereby defendants' agreed to take it if it worked to their satisfaction, and to pay for it by note due May 1, 1884, or by cash payment on that day; and the plaintiffs agreed to come over when notified that the machinery was ready for running. When the contract was made the work of the shop was suspended for a change of engine and machinery. The engine was soon set running again, but no rearrangement of the gearing for the spoke-machine was made until just before the fire, which was April 22, 1884. This delay was for convenience of the general business. The court below held that defendants were bound to try the machine within a reasonable time and that they were liable to have it treated as accepted if they did not do so, and it was left to the jury to say whether they had done so. We think this was error. The contract was not to accept the machine if it worked well, but to accept it if it worked to defendants' satisfaction. They could reject it at any time if it did not please them, whether good or bad. Machine Co. v. Smith, 50 Mich. 565. This option, we think, continued until May 1, 1884, when they were undoubtedly bound to decide. The declaration in the special count was framed on this theory, and and we think it plainly the correct one. The title could not pass without acceptance until the time of choice was over, and the plaintiffs were owners of the machine when burned, and not the defendants.

New trial ordered.

WHEN young men lay up for old age; when aged they hoard for death. It is in the nature of parsimony to confirm itself and to increase.

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NOTES OF RECENT DECISIONS.

1. *Federal Jurisdiction: Action; Statute; Impairing Obligations of Contracts.*—This court has jurisdiction of an action in which is raised the question of an impairment of the obligation of a contract by a statute.

2. *Ibid: Ibid; Proceedings to Dissolve Insolvent Life Insurance Company.*—The State courts may enjoin an insolvent life insurance company, and dissolve it by due legal proceedings; the exercise of such a power does not impair the obligation of the charter of incorporation.

3. *Corporations: Reasonable Legislative Control.*—There is implied in all charters the condition that the corporation shall be subject to such legislative regulations as shall not unjustly interfere with the substantial enjoyment of the privileges granted.

4. *Waiver: Amended Charter; Legislative Control of Corporations.*—An amended charter giving a company the right to insure lives, in which it is set out that the act itself nor the amendment thereof "shall not be deemed to exempt the company from the operation of such general laws as may hereafter be enacted by the general assembly on the subject of life insurance," upon its acceptance operates as a waiver of any exemption from the operation of such laws.

5. *Constitutional Law: Impairing Obligations of Contracts; Life Insurance Company; Dissolution; Policy holders and Creditors.*—A statute directing the dissolution of an insolvent life insurance company does not impair the obligations of its contracts with its policy holders and creditors.

6. *Errors and Appeals: Unconstitutional Statute; Evidence.*—In considering whether a statute impairs the obligations of contracts this court will not inquire into the facts of the case; it will construe the statute only. [Chicago Life Ins. Co. v. Needles, S. C. U. S., March 2, 1885.]

Patent: Reissue; Infringement; Laches.—To a bill for the infringement of a patent where the claim is made upon a reissue, five years after, and not upon the original patent, laches is a complete defence. [Wollensak v. Reiher, S. C. U. S., May 4, 1885.]

1. *Damages: Copyright; Allowances for Plates and Editing.*—In allowing damages for the infringement of a copyright the cost of the stereotype plates and editorial charges will not be deducted from the receipts for sales.

2. *Ibid: Ibid; Sale of Second hand Books.*—The profits on the sales of second hand books must be allowed, as on the sales of the new volumes, on the infringement of a copyright. [Myers v. Callaghan, U. S. Cir. Ct., N. D. Ill., June, 1885.]

1. *Resulting Trust: Partnership; Purchase of Real Estate.*—The doctrine of resulting trust applies to the purchase of real estate by a partner with partnership funds, and that he proposed, in good faith, to account for the money so used in the partnership accounts will not defeat the establishment of the trust.

2. *Ibid: Case stated.*—This rule does not apply in this case, the facts taking it out of the rule. [Kayser v. Mangham, S. C. Colo., May 12, 1885.]

Negligence: Contributory Negligence; Brakeman running ahead Engine to turn Switch.—A brakeman who voluntarily gets down on the pilot of an engine, steps on the track and runs ahead along the track to turn a switch, while the train is moving, is guilty of contributive negligence, and cannot recover for an injury occasioned by his falling on the track and being run over by the engine. [Gibbons v. Chicago, B. & Q. R. R. Co., S. C. Iowa, June, 1885.]

Evidence: Use and Occupation; Declarations of Third Person in Possession.—In an action for use and occupation, the declarations of a party in possession to third parties are admissible to show that he held possession under defendant and not under the plaintiff. [Jacobs v. Callaghan, S. C. Mich., May, 1885.]

Tenancy in Common: Chattels; Rights between Co-Tenants; Sale by One; Vendee; Assumpsit; Statute of Limitations.—The possession of a chattel by one of several tenants in common is the possession of all; a sale by one tenant in common of the entire chattel will pass only his share; a co-tenant has no right to object to the mere sale by a co-tenant of his own interest. When, therefore, a co-tenant sells the entire chattel, and the purchaser takes possession thereof, such possession is not adverse to a co-tenant who has not joined in or ratified the sale, and in case of a sale by the purchaser claiming the entire chattel, and receiving the price therefor, he will be liable to the co-tenant in assumpsit, although the action is not brought for more than six years after the first sale, for the statute of limitations will not begin to run in favor of the purchaser until the time of the sale by him. [Browning v. Cover, S. C. Penn., March 30, 1885.]

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1. Parol evidence is admissible to show a verbal contemporaneous agreement which induced the execution of a written obligation, though it may have the effect of varying or changing the terms of the written contract.

2. In an action on a judgment obtained after the defendant therein was adjudicated a bankrupt, and before his discharge upon a debt provable under the bankrupt law, the original debt is merged in the judgment, and the subsequently granted certificate of discharge is no defence thereto. [Brown v. Morange, S. C. Penn., Leg. Int., July 31, 1885.]

The Courts.

IN EQUITY.—New Suits.

August 1, 1885.

9558. Annie Thelan v. Etienne J. Thelan. For divorce, Com sol, J. P. Anderson.

August 3, 1885.

9559. Lavinia C. De Witt v. Chauncey J. Reed et al. Injunction. Com sols, Briggs and Dennis.

August 4, 1885.

9560 Thomas M. Simms et al. v Jesse D. Gibbs. To enforce mechanics' lien. Com sol, D. W. Glassie.

9561. Thomas J. Moore et al v. John H. Shannon. Partion Com sols, Edwards & Barnard.

9562. John W. Johnson v Letitia Hood et al. To sell. Com sols, Miller & Forrest

August 6, 1885.

9563. Paulina Sink v. Frederick Sink. For divorce, Com. sol, N. H Miller.

9564. Francis Drummond v. Daniel Murray. Acct. Com sol, I. Williamson.

August 7, 1885.

9565. James A. Thomas et al. v Arthur F. Thomas et al. Partition by sale Com sol, Chapin Brown.

9566. Laurent Ruel v. Martin V. Montgomery, Com'r of Patents. Injunction Com sol, Louis Bagger.

9567. Marion Eastwood v. Matthew H. Tuelon et al. Judg't, creditor's bill. Com sol, C. Storrs.

CIRCUIT COURT.—New Suits at Law.

August 1 1885.

26309. D. F. Ryon v. Gale Sherman. Judg't of Justice Tait, $81.69.

26310. Same Judg't of Justice Tait, $51.52.

26311 Lavinia C. De Witt v. Chauncey J. Reed et al. Acct., $1565. Piffs attys. Briggs and Dennis.

August 3, 1885.

26312. The U. S., ex rel., Luther H. Pike, v. Albert T. Babbitt. Acct, $:000 Piffs atty, L. H. Pike

26313 The U. S. ex rel State of Mississippi. Piffs atty, Morris and Manning.

August 4, 1885.

26314. Joseph R. Hertford v. Lewis A Walker. Judg't of Justice Helmick, $66 50. Piffs atty, J. J. Wilmarth.

26315. Same. Judg't of same, $33. Piffs atty, Same.

26316, Same Judg't of same, $60 Piffs atty, same

26317. Caleb C Merritt v William F Geyer Replevin. Piffs atty, W. K. Duhamel

26318. Charles E. Creecy v. Obediah Kimmell et al. Certiorari Defts atty, N. H. Miller

2619. John Gibbons v. James H. Dyer. Judg't of Justice Buckey, $69.80.

26320. Lewis Simpson v John W. Hunter, Ex'r. Acct, $515. Piffs atty, W. B. Webb.

August 6, 1885

26321. John McGregor v. Jane P. Weir. Notes, $231.10. Piffs atty, C. A. Walter.

August 7, 1885.

26322. Washington O. Berry v. Joseph F. Bradley. Note, $390. Piffs atty, I. Williamson.

August 8, 1885.

26323. Robert O. Hewett v. Wm. Z. Partello. Note $150. Piffs atty, W. O. Stone.

26324. Alonzo F. Carman v Martha Marston. Replevin. Piffs atty, W. A. McKenny.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Selina C Pendleton, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscribers on or before the 7th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 7th day of August, 1885.

ROSE B. DARRELL,
E. C. PENDLETON.
32 Executors.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration, on the personal estate of John J. Gorman, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 7th day of August next; they may otherwise by law be excluded from all benefit of the said estate,

Given under my hand this 7th day of August, 1885.

M. B. GORMAN,
32 Administrator.
NEAL T. MURRAY, Solicitor.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Adminstration on the personal estate of Susan B. Porter, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of August next; they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 7th day of August, 1885.

JOHN W. ROSS,
32 Administrator.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Caspar Schaefer, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of August, 1885.

CATHARINE SCHAEFER.
LOUIS SCHAEB, Solicitor. 32 Executrix.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Henry Isemann, late of the District of Columbia deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of August, 1885

CATHARINE ISEMANN,
FERDINAND SCHMIDT, Solicitor. 32 Executrix.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 31st day of July, 1885.

JOHN A LOUDON
v. } No. 9378.
WM G FLOOD ET AL

On motion of the plaintiff, by Mr. C Carrington, his solicitor, it is ordered that the defendants, William G. Flood, Samuel Mason and Harriet Ann Dorsey, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
True copy. Test: 31 R. J. MEIGS, Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Holding a Special Term for Orphans' Court Business, August 7th, 1885.

In the matter of the Estate of E. P. Walsh alias Edward Walsh, late of Washington, D. C., deceased

Application for Letters of Administration on the estate of the said deceased has this day been made by H. J. Daly, a creditor of said deceased.

All persons interested are hereby notified to appear in this court on Friday, the 4th day of September next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WM. M. MERRICK, Justice.
Test: 32 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 17, 1885.

In the matter of the Estate of Susan Viegle, late of the District of Columbia, deceased

Application for Letters of Administration on the estate of the said deceased has this day been made by Susan Hopp.

All persons interested are hereby notified to appear in this court on September the 4th A. D. 1885, next, at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WM. M. MERRICK, Justice.
Test: 32 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 7th day of August, 1885

PAULINE SINK
v. } No. 9563. In Equity.
FREDERICK SINK.

On motion of the plaintiff, by Mr. Nehemiah H. Miller, her solicitor, is it ordered that the defendant, Frederick Sink, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. WM. M. MERRICK, Justice.
A true copy. Test: 32 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of Greensboro, N. C., hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Hunter Brooke, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of August, 1885.

FERDINAND SCHMIDT. LORENZO A. BAILEY
32 Solicitor. 511 7th St., N. W. Administrator.

THIS IS TO GIVE NOTICE

That the subscribers, of Port Tobacco, Md., and Washington, D. C. have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration W. a. on the personal estate of Mary C. McDonnell, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscribers on or before the 16th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 16th day of July, 1885

F. MARCELLUS COX,
30 GEORGE E. HAMILTON.
Administrators w. a.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 22d day of July, 1885.

JOHN STEWART
v. } No. 9538. Equity Docket. 25.
EUPHEMIA STEWART.

Application of divorce on the ground of desertion.

On motion of the plaintiff, by Mr. C. Storrs, his solicitor, it is ordered that the defendant, Euphenia Stewart, cause her appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
True copy. Test: 30 R. J. MEIGS, Clerk.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Leonora A. Ellis, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of July, 1885.

HORATIO BROWNING,
EDWARDS & BARNARD, Solicitors. 29 Administrator.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Richard T. Merrick, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of July, 1885

29 MARTIN F. MORRIS, Executor.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Nannie Merrick, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 18th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of July, 1885.

29 MARTIN F. MORRIS, Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 15th day of July, 1885

HARRY W. GREEN ET AL.
v. } No. 9257. Eq. Docket 24.
EDWARD I. GREEN ET AL.

On motion of the plaintiffs, by Messrs. Knott & Ennis, their solicitors, it is ordered that the defendants cause their appearance to be entered herein on or before the first rule day, occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
True Copy Test: 29 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. The 10th day of July, 1885.

GEORGE CALLAGHAN
v. } 9243. Eq. Doc. 24.
MARY J. O'FLANNIGAN et al

On hearing the report of James Fullerton, trustee, it is, this 10th day of July, A. D. 1885, ordered that the sale reported by said trustee, and the expenses thereof, be confirmed and allowed, without reference to the Auditor, unless cause to the contrary be shown to this Court on or before the 10th day of August next

Provided, that a copy of this order be published in the Washington Law Reporter once a week for three weeks before said 10th day of August, 1885.

The report states the amount of sale and interest on deferred payments to be $2141.20.

A. B. HAGNER.
A true copy. Test: 28 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

LENA HOFFMAN
v. } No. 9408. Equity Doc. 24.
WILLIAM THOMA et al.

Benjamin F. Leighton, trustee in this cause, having reported a sale of all the real estate and premises described in these proceedings to one Robert Reyburn, jr., for the sum of $1650, it is this 25th day of July, A. D. 1885, ordered that said sale be finally ratified and confirmed unless cause to the contrary be shown on or before the 1st day of September, A. D. 1885.

Provided, that a copy of this decree be published in the Washington Law Reporter, once a week for three successive weeks before that day.

By the Court.
A true copy. 30 Test: R. J. MEIGS, Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 31st, 1885.

In the matter of the Estate of John A. B Leonard, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by Sallie Johns Peter.

All persons interested are hereby notified to appear in this court on Friday, the 4th day of July, next, at 12 o'clock, m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

By the Court. A B. HAGNER, Justice.
Test: 31 H. J. RAMSDELL, Register of Wills.
H. N. SOHON, Solicitor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Thomas T. Scarff, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of July, 1885.
ANGELINA SCARFF,
ABERT & WARNER, Solicitors. 31 Executrix.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Howard Johnson, late of the District of Columbia, deceased.

All persons having claims again the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 30th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of July, 1885.
31 HENRY A. JOHNSON
ABERT & WARNER, Solicitors Administrator.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business. Letters Testamentary on the personal estate of Samuel F. Conover, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 28th day of July, 1886 next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of July, 1885.
31 SAM'L V. NILES,

THIS IS TO GIVE NOTICE:

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Charles Clark, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of July next: they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of July, 1885.
JOHN J. WILMARTH,
31 Administrator.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of James Torphy, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 22d day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of June, 1885.
BENJAMIN F. RITTENHOUSE,
GORDON & GORDON, Solicitors. 31 Administrator c. t. a.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 31st day of July, 1885.

ANDREW J. AVERY v. JULIA A. JOHNSON ET AL } No. 9656.

On motion of the plaintiff, by Mr. Irving Williamson, his solicitor, it is ordered that the defendants Julia A. Johnson and William Johnson, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
True copy. Test: 31 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John Wunderlich, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 31st day of July, 1885.
JOANNA TURNER,
JUDSON T. CULL, Solicitor. 31 Admisintratrix.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

JOHN H. KING et al. v. WILLIAM WATSON et al. } Eq 9441. Docket 24.

Jesse H. Wilson and George W. King, trustees herein, having reported the following sales, to wit:

To John F. Dyer, lot 12 in square 15, Washington, D. C., for $1,724.84.

To James Manogue, parts of lots 8 and 9, in the "Slip," in Georgetown, D. C., for $3,125.00.

To Jesse V. N. Huyck, part of a tract of land called "White Haven," in Washington County, for $1,141.28.

Being all the property in this cause decreed to be sold, and in the aggregate amounting to the sum of $8,991.12.

And which sales and the property sold are more fully described in said trustees' report, and the proceedings herein.

It is, this 28th day of July, A. D. 1885, ordered by the Court, on motion of complainants' solicitor, that said sales be confirmed, unless cause to the contrary be shown on or before the 1st Tuesday of September, 1885.

Provided a copy of this order be published in the Washington Law Reporter, once a week for three consecutive weeks before said day.

A. B. HAGNER.
A true copy. 31 Test: R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

ELIZABETH M. GULICK v. MARY E GULICK et al. } 9454. Eq. Doc. 24

Upon consideration of the trustee's report of sales, it is by the Court, this 29th day of July, A. D. 1885, ordered, adjudged and decreed, that the sales so reported stand ratified unless sufficient cause to the contrary be shown to the Court on or before the 1st day of September next.

Provided a copy of this order be published once a week for three successive weeks prior to said last mentioned day.

The report shows amount of sales to be $23,388 43-100.

A. B. HAGNER.
A true Copy. Test: 31 R. J MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 22d day of July, 1885.

JOHN H. KETCHAM v. JAMES W. PATTERSON. } No. 9541. Eq. Doc. 25.

Bill to quiet title.

On motion of the plaintiff, by Messrs. Birney & Birney his solicitors, it is ordered that the defendant, James W Patterson, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 30 R. J. MEIGS, Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 22d day of July, 1885.

WILLIAM W. METCALF
v.
WILLIAM DELANEY, C. H. HOLDEN and others. } No. 9540.

On motion of the plaintiff, by Messrs Hagner & Maddox, his solicitors, it is ordered that the defendants, William Delaney and C. H. Holden, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 30 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Thomas I. Middleton, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 22d day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of July, 1885.
30 B. F. LEIGHTON, Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 17th, 1885.

In the case of Anson S. Taylor, executor of Isaac Bradley, deceased, the executor aforesaid has, with the approval of the court, appointed Friday, the 14th day of August, A. D. 1885, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 29 H. J. RAMSDELL Register of Wills

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

HENRY CLARK ET AL.
v.
HENRY HOHMAN ET AL. } 9838 Eq Doc. 24.

The trustee, Randall Hagner, having reported to the Court that he has sold the real estate in the proceedings in this cause mentioned, to wit, all of original Lots six, seven and eight, in Square west of Square numbered six hundred and ninety-five, on the ground plat or plan of the city of Washington, in the District of Columbia, to E. Kurtz Johnson, at and for the sum of $7606 48, and that the said purchaser has fully complied with the terms of sale:

It is, therefore, this 17th day of July, A. D. 1885, ordered, that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 17th day of August, A. D. 1885.

Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said last named day.

A. B. HAGNER, Asso. Justice.
A true copy. Test: 29 R. J. MEIGS, Clerk

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 31st, 1885.

In the matter of the Estate of Joseph Trimble, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by James Trimble and Mary Blakely.

All persons interested are hereby notified to appear in this Court on Friday, the 4th day of Sept. next, at 12 o'clock, m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice
Test: 31 H. J. RAMSDELL, Register of Wills.
J. T. CULL, Solicitor.

Legal Notices.

THIS IS TO GIVE NOTICE,

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Emily Beale, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23rd day of July next; they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 23rd day of July, 1885
30 JAMES H. SAVILLE, Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 24th, 1885.

In the matter of the Estate of Eleanor Miller, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Charles Miller, who prays that Horatio Browning may be associated with him as co-administrator.

All persons interested are hereby notified to appear in this court on Friday the 14th day of August next at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 30 H. J. RAMSDELL, Register of Wills.
EDWARDS & BARNARD, Solicitors.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of George M. Schaefer, late of the District of Columbia, deceased

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 17th day of July next; they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 17th day of July, 1885.
KATHARINE SCHAEFER,
H. R. WEBB, Solicitor 30 Administratrix.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of Michael Caton, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of July, 1885
MARY CATON,
CHARLES A. ELLIOT, Solicitor. 30 Administratrix c.t.a.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William Bowles, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 17th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of July, 1885.
JAMES BELLEW.
HOSEA B. MOULTON, Solicitor. 30 Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 16th day of July, A. D. 1885.

ELEANOR THOMPSON
v.
SARAH J MUSSER et al. } No. 8774. Eq. Doc. 23.

Ordered that the sale made and this day reported by Reginald Fendall, trustee for the sale of the real estate in this cause mentioned, be ratified and confirmed unless cause to the contrary be shown on or before the 17th day of August, A D 1885.

Provided a copy of this order be inserted in the Washington Law Reporter once in each of three successive weeks before said day.

The report states that the property sold for $6,500.

A. B. HAGNER.
A true copy. Test: 29 R. J. MEIGS, Clerk.

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Washington Law Reporter

WASHINGTON - - - - - - - - August 15, 1885.

GEORGE B. CORKHILL - - - EDITOR

THE Supreme Court of Texas, it is said, recently set aside the verdict of a jury on the ground that undue influence had been exerted on the minds of the jurors by the caustic manner in which the plaintiff's attorney addressed them. The plaintiff sued a railroad company for damages for injuries suffered as a passenger, and the jury brought in a verdict for him assessing his damages at $15,000. The company's attorney moved the court to set it aside "because of certain remarks made by the plaintiff's counsel in his closing argument to the jury." The remarks complained of were as follows:

"Gentlemen, this rich corporation has employed able counsel who come here and denounce Hancock as a fraud and a liar. More than that, they cast aspersions on the good name of his wife, by this man Poteet—one of the defendant's witnesses who swears that, while he was gathering up the tail end of his family at church, a certain conversation between himself and plaintiff occurred which I will not repeat. I tell you, gentlemen, such testimony and such a defence as that aggravates this case. Not content with having injured, crippled and ruined him for life, they come into court and ridicule his injuries, denounce him as a fraud and a liar, and cast aspersions upon his family. You should compensate him for this, gentlemen. You should teach this rich corporation that they shall not make such attacks upon the fathers of this country."

We have not seen the opinion of the court in this case, and are therefore unaware of the grounds of decision on which it proceeded. From the rather meagre statement of facts, too, it is hardly proper to draw a conclusion as to whether the decision of the court is in accordance with precedents or not; for a full report of the case might cast a very different light upon it from that shed by a mere unauthoratative abstract.

Our attention has been called to it by numerous citations in the papers, accompanied by remarks of disapproval. The subject presents a good field for consideration, and to our mind is one of some importance.

From our present knowledge of the facts of the case, as contained in the abstracts floating about, we are also inclined to disapprove of the view taken by the court. It has been decided very recently that observations made by an attorney in his argument to the jury as to facts not in evidence, will not warrant a reversal of a verdict of conviction, if the court, at the time, reproved the attorney for his conduct, and afterwards instructed the jury to disregard all facts not in evidence; and, as a logical conclusion therefrom, that, had the court not reproved the counsel and instructed the jury, there would have been sufficient ground to warrant a reversal of the verdict. U. S. v. Musser, S. C. Utah. This is, perhaps, the general rule on the subject, as far as it can be said there is any.

If the Texas case involves this consideration, we think the decision correct.

Counsel frequently go beyond what is strictly in evidence in the heat of argument, and, generally, no evil results follow. It cannot be said that mere exaggeration by counsel can be good ground for reversal of a verdict. The case would have to be very flagrant indeed to justify such a course, if even then it would be sufficient. But it may be that the many remarks of disapproval of the decision of the Texas court are wholly unwarranted and unjust, and we are by no means satisfied to believe hastily that such a high court has rendered anything but a correct decision. We give it this attention at present owing to the manner in which it has been called to our notice. It may be given further consideration at a later date.

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Supreme Court District of Columbia

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

THOMAS J. FISHER ET AL.

vs.

ALMERIN H. LIGHTHALL.

LAW. NOS. 25,128, 25,188, 25,268, CONSOLIDATED.

Decided May 25, 1885.
Justices COX, JAMES and MERRICK sitting.

In the letting of a house (whether furnished or unfurnished) there is no implied contract or condition that it shall be habitable.

STATEMENT OF THE CASE.

These were three suits brought to recover monthly instalments of rent of a house and furniture under a written lease. The defendant paid rent for the time he occupied the premises from November 10, 1883, until he vacated them, February 18, 1884.

At the trial, and as a complete defence, the defendant's counsel offered to show by two expert plumbers, masters of their trade, that they had examined the premises; that they found the plumbing and heating apparatus defective throughout the house; that there were no traps at any place to prevent the escape of sewer gas through any of the pipes; that there was no ventilating pipe, save one which was wholly inadequate for the purpose; that the said pipe did not convey away the filth, &c.; that on two occasions during defendant's three months' occupancy of the premises he was compelled to have the said pipes blown or forced open for the passage of the filth (and the amount paid for these services); that there were no traps at the wash tubs, bath tubs or water closet, and there were no means to prevent sewer gas from filling the house, and that such gas is highly injurious and detrimental to health.

Defendant further offered to prove by three competent witnesses that shortly before or about the 10th of November, 1883, the date of the renting, the house was well ventilated, had no fire, and appeared suitable for habitation; that the defects afterwards found were then latent; that shortly after, and as soon as the furnace and range in the house had been put in order, fires kindled, and the house heated, the premises became intolerable and unfit for human habitation, from the sewer gas penetrating the house from the sewers, and from the illuminating gas escaping from the gas-pipes, and that one or more members of defendant's family were made ill, and continued ill during the whole time of defendant's occupation of the premises, from the noxious gases and unhealthy condition of the house, made so by the defective plumbing; that the physician and medical adviser of defendant, after vainly endeavoring to restore them to health, declaring the condition of the house to be the cause of their sickness, required and directed the removal of defendant's family from the premises, and refused to continue his attendance at this place, as it would be waste of time.

And also that the said premises were infested with ants from the basement to the garret, so that no articles of food could be protected from their depredations, and that these ants infested also the furniture in the house, by means of all which the house was unfit for human habitation.

But the court overruled said offer and excluded all said proof; to which exceptions were taken.

The court directed the jury to find a verdict for the plaintiffs. The defendant then appealed to the General Term.

GEORGE E. HAMILTON for plaintiff:

There is no stipulation in the lease, and no implied condition that the property was fit for anything. The lease is the only contract between the parties.

FRED. W. JONES for defendant:

There is an implied condition in the renting of a furnished house that it is in a fit state of habitation. Smith v. Marrable, 11 M. & W., 5.

In Campbell v. Wenlock (the nuisance here was bugs), 4 Fos. & Fin., 716, Cockburn, C. J., directed the jury that if the "nuisance prevailed to such an extent as to destroy the reasonable rest and comfort of the inmates the tenant could refuse to occupy or to pay rent."

In Wilson v. Finch Hatton (the nuisance here was bad drainage), Kelly, Chief Baron, said, where there is either great discomfort, or danger to health, the ten-

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ant is entitled to repudiate the contract altogether, and Huddleston, Baron, in the same case, said, "the implied condition is that the furnished house shall be reasonably and decently fit for occupation." 2 Law R., Exch. Div., 336.

In Bird v. Greville, Justice Field came to the conclusion, on the facts, "that the house was in such a state that a person could not live in it without risk," and gave judgment for the tenant. In this case there had been infectious disease in the house and it had not been disinfected.

Mr. Justice JAMES delivered the opinion of the court.

In the consolidated cases of Thomas J. Fisher and others against Almerin H. Lighthall, it appears from the record that Fisher & Co., acting as real estate agents are accustomed to do here, executed in their own name a lease to the defendant Lighthall of a furnished house in this city at the rate of one hundred dollars a month for one year from the 10th of November, 1883.

It also appears that the tenant occupied the premises several months, and then, claiming that they were in an uninhabitable condition, left them, and afterwards surrendered the keys to the landlord, that is handed them to him, although they were not accepted by way of surrender. The defendant paid the rent up to the time he left.

Suit was brought for the recovery of the rent for the remainder of the term. The defendant's counsel offered to prove the house uninhabitable at the time of the demise by the following evidence:

"To prove, by three competent witnesses that shortly before or about the 10th of November, 1883, the date of the renting, the house was well ventilated, had no fire, and appeared suitable for habitation; that the defects afterwards found were then latent; that shortly after, and as soon as the furnace and range in the house had been put in order, fires kindled, and the house heated, the premises became intolerable and unfit for human habitation from the sewer gas penetrating the house from the sewers, and from the illuminating gas escaping from the gas pipes, and that one or more members of the defendant's family were made ill, and continued ill during the whole time of defendant's occupation of the premises, from the noxious gases and unhealthy condition of the house, made so by defective plumbing."

He also offered to prove that the premises were infested with ants from the basement to the garret, so that no articles of food could be protected from their depredations, and that these ants infested also the furniture in the house, by means of all which the house was unfit for human habitation.

The lease contains covenants on the part of the lessee that he will take the house and hold it for one year from the 10th of November, 1883, and that he will pay this rent and the gas bills and water rent bills, and that he will leave the premises in like good order in which he took them. It contains no express condition or reservation in case the house proved to be unfit for habitation at the time he took it. He claims, however, that the law establishes a condition—not merely a covenant, but a condition—that if a house is let furnished (for he confines himself to that), and it is not in a habitable state, the lessee may throw up the lease and abandon the premises without liability to pay rent for the property.

We were referred to the case of Smith v. Marrable, 11 Mees. & W., 5, decided by Lord Abinger, chief baron of the circuit, and afterwards adopted by the judges of the exchequer, where a house simply designated as house No. 5 Brunswick Place, London, was rented for a short period, being as a matter of fact a furnished house. Lord Abinger held, that the party could abandon the premises on finding that the beds were incurably infested with bedbugs —that is shown to have been the meaning of the language used by a subsequent case in which Lord Abinger commented upon this one. He dwelt upon the dual character of the letting; that it was not a letting of real estate simply nor substantially, but was a letting of a furnished house in which the furniture was one of the constituents demised. There was no specific description of the furniture to be let, and his lordship was of opinion that there was an undertaking that a furnished

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house should have appropriate furniture in it. That was all of the case. The objection of the lessee did not relate to any defect of the real property, but was wholly to the furniture, and the court thought that in such case there was an undertaking that suitable furniture should be substituted and if it were not the party could give up the lease.

The principles on which they undertake to establish this seem to be very shadowy, and they begin upon a very curious basis. Baron Park referred to two cases of this character, as showing that where premises held from year to year become untenantable, the courts sustain the tenant in his abandonment of the premises without notice to the landlord. That has no application to a case of a fixed tenancy for a specific term, for the law created that tenancy from year to year and upon equitable considerations.

Resting upon such grounds as that the exchequer sustained Lord Abinger in his conclusions that where house and furniture were let, and there appeared to be no specific designation of the particular furniture, there was an implied undertaking that appropriate furniture should be put into the house if such furniture was not there already, and if that condition was not complied with, then the whole letting should be thrown out.

That question came up afterwards, in the case of Sutton v. Temple, 12 Mees. & W., 52, and in the case of Horl v. Windsor, in the same volume, page 68, and there it is perfectly apparent that the court cut the case down to the letting of a furnished house where there appeared to have been no specific description of the furniture to be let, and where the defect had been in the furniture.

At a later period the question came up in relation to a defect in the premises of the real estate itself. The case is that of Wilson v. Finch-Hatton, 2d Law R., Ex. Div., 336. A lady, through an agent, had taken a furnished house in London to be held by her during what is known there as the season—three months. It proved, when she arrived, that the house had a bad smell. She refused to occupy it and went to other lodgings, and wrote to the landlord that the house was unfit for habitation. The landlord then undertook to put it into good condition, when it was discovered that there was a cess-pool under the pantry, and that under the kitchen floor there was a most frightful condition of filth that was covered up. Chief Baron Kelly was of opinion there, that where a house was let furnished for immediate occupation, under just such circumstances as I have described, there was an understanding that it should be habitable. After discussing certain principles, he said:

"I now proceed to consider whether both parties to this agreement intended that the house should be fit for occupation; that is, that it should be reasonably healthy, and so not dangerous to the life of those inhabiting it. I think that it is quite manifest that they did so intend; and, indeed, one of the letters of the lady who intended to occupy the house (and she is practically the defendant), mentions the subject of drainage. Is it not, then, clear that the tenant is entitled to find the drains in such a condition that she and her family and her servants can safely enter and live in the house? However, on the contrary, when she entered, she found that there were strong and noisome odors in the house, and that there was under the rooms in the basement a deposit of filth and fœcal substance, which it was absolutely necessary to remove before the house could be safely occupied by anyone. Without doubt, a person who so enters under such an agreement as this on furnished premises in the condition just described, may at once throw up the lease and decline to pay any rent under it. Can it be that the lessee would be bound to give notice of the defects in the house to the lessor, and then to procure another temporary residence, and wait there until the lessor had completed the alterations necessary to render the house healthy? I am of opinion that if such were the law of England it is time that it should be altered. But the law is not so," he added.

That, then, is the only case cited to us in which a defect to the real property was held to be a ground on which the party could abandon the lease without paying the rent; in other words, the only case in which such a defect was held to be a condition to the letting.

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In the other cases the court expressly disclaimed any intention to apply this rule to the letting of real property as a rule appropriate in such cases, and they applied it only on the ground that there was coupled with it a condition implied from this contract about the furniture.

The same question has come up in this country. The later English cases have declined to apply that doctrine, and the American cases have followed these later cases.

There is a very marked case in 9th Cushing, where the court quote from the Exchequer Court decision, and they express the opinion that under such a condition of letting, the health of the premises, might not seem to be an unreasonable rule in such cases, yet it was not in the power of the court to establish such a rule; that parties are to be left to make their own contracts, and where they have done so the courts will not undertake to introduce new terms into a written contract. We constantly insist upon that with regard to all other contracts where they are supposed to set out the full intention of the parties, and certainly it is quite as reasonable to do it in respect to the letting of land where the contract is generally made with peculiar deliberation.

I have to remark that although it might seem to be a reasonable condition, and if we had to establish the law for the first time, we might think it was a reasonable condition for the courts to enforce, that property for human occupation should be understood between the parties to be at least healthy, yet parties choose to make their own contracts and we must leave them to that. It is safer, on the whole, and the ordinary principles applicable to other cases of written contracts are just as applicable and as reasonably applicable here.

Furthermore, it may be said that great inconvenience on the other hand might arise from an attempt of the courts to introduce this principle. About as much fraud would arise in the attempts of tenants to break up the lease when they found the premises were disagreeable as when the premises were not disagreeable. It is better, therefore, that parties must make their own contracts and protect themselves. The law does not undertake to treat contracting parties as requiring nurses. We must apply here the ordinary rule which has always been understood to regulate the contracts of parties to the letting of houses, viz., that there is no implied contract or condition, that the premises shall be habitable.

The judgment of the court below is afrmed.

Supreme Court Louisiana.

CRESCENT CITY ICE COMPANY *vs.* ERMANN.

Evidence: Presumption; Testimony not Produced.—A litigant who fails to produce proof within his reach creates a presumption that it would be prejudicial to his case, especially when the evidence is in his possession, and his adversary has demanded it.

Appeal from Parish of St. Mary.

Action for $2,915 for ice furnished. The defendant says he purchased from one Dreyfus, and not from plaintiff. See opinion for the facts. The defendant appealed.

MANNING, J., in delivering the opinion of the court, said: The defendant is an ice dealer in Morgan city. Dreyfus was a wholesale dealer in liquors and cigars in New Orleans, was the personal friend of Ermann, and the medium through whom Ermann's drafts, checks, etc., were collected. Ermann's funds were left with Dreyfus, and he drew on Dreyfus whenever there was occasion. Dreyfus failed in October, 1883. The ice was furnished in September and October, the last shipment being on the 19th, several days before Dreyfus' failure. Ermann's contention is that Dreyfus was his commission merchant, from whom he ordered ice, and whom he paid for it by the several remittances he made from time to time. There does not appear to have been any settlement of their accounts. There is nothing to show that Dreyfus charged Ermann with these several ice bills, and that Ermann's funds in Dreyfus' hands were thereby diminished. Dreyfus says he owes Ermann nothing on account. Ermann says "when Mr. Dreyfus failed he owed him a little amount, which has since been paid." Dreyfus swears stoutly that he alone owes the bill; but neither he nor Ermann have furnished any evidence beyond their own asseverations that they or either of them understood at the time that the one was selling ice and the other was buying it; much less is there proof that the plaintiff understood it was selling ice to Dreyfus and was looking to him for payment. And a significant fact is that the plaintiff endeavored to furnish such proof as would show the contemporane-

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ous acts of the parties, and was thwarted by the defendant. The plaintiff gave the defendant notice before the trial to produce his check book and the several bills of the plaintiff for the sixteen shipments of ice. If it were a fact that the ice company was selling to Dreyfus, these bills would have shown it, and would have therefore established that the plaintiff was giving credit all the time to Dreyfus alone. The defendant did not produce them, and says he made no effort to get them. The presumption is always and inevitably against a litigant who fails to furnish evidence within his reach, and it is the stronger, when the documents, writings, etc., would be conclusive in establishing his case. It is a legal inference that the writings would prejudice him whenever he fails to produce them, and when, too, his adversary had challenged the production of them as a decisive test of their respective pretensions. The lower court gave judgment for the full demand.

Judgment affirmed.

Supreme Court Wisconsin.

WHEELER & WILSON MANUFACTURING CO.
vs.
MONAHAN.

1. *Deed: Husband to Wife; Validity*—A conveyance of land by a husband directly to his wife is effectual as against creditors unless made to hinder or delay them, as between the parties an equitable title is conveyed.
2. *Ibid: Ibid; Record; Creditor.*—The fact that such a deed is not recorded until after the debt in question has been contracted by the grantor is not material.

Appeal from Kewaunee county.

Creditor's bill. The main contention was as to the validity of a voluntary conveyance from husband directly to his wife, both defendants herein. The said defendants appealed.

LYON, J., in delivering the opinion of the court, said: The conveyance of August 16, 1880, executed by the defendant Hugh to his wife, the defendant Catharine, is effectual, as between the parties thereto, to pass to the grantee the equitable title to the land therein described. Putnam v. Bicknell, 18 Wis., 333, and cases cited. Such conveyance is lso effectual as against the creditors of the grantor, unless it was executed with intent to hinder or delay them in the collection of their debts, or unless the grantee has done, or omitted to do, some act which estops her to assert it as against them. Such was the ruling of this court in Le Saulnier v. Loew, 53 Wis., 207, which is very similar in its facts to this case. The circuit court did not find specifically that the conveyance was made with a fraudulent intent, and did not so find inferentially, unless it is included in the seventeenth finding of fact. We do not think that can properly be construed as finding a fraudulent intent. But it is quite immaterial whether it be so construed or not, for there is no testimony showing, or tending to show, any such intent. The conveyance was executed nearly two years before the defendant Hugh assumed the obligation which is the basis of the judgment against him. At that time he was not indebted to any one, and there is not the slightest testimony tending to show that he then contemplated incurring such obligation, or any other. See Wheeler v. Single, 22 N. W. Rep., 569. Besides, he was old and infirm—a cripple, indeed—quite unable to labor or take charge of his farm, while his wife was a healthy, capable woman, who necessarily had the principal charge of the affairs of the family, with whose earnings, mainly, the farm was purchased, and who chiefly managed and controlled it. The execution of the conveyance, under those circumstances, was a most reasonable and meritorious act, and there is nothing whatever in the pecuniary condition of the grantor at the time, or in any of the surrounding circumstances, to support the slightest suspicion that the conveyance was prompted by any fraudulent intent on the part of either of the parties to it. The fact that the deed was not recorded until after the grantor had incurred the obligation above mentioned is of no significance. The same fact occurred in Le Saulnier v. Loew, *supra*, and yet the voluntary conveyance to the wife was upheld. It is true, in that case a trustee intervened; but, as we have already seen, that is unimportant in equity.

Reversed and remanded.

English Court of Appeals.

HUNT *vs.* HUNT.

1. *Marriage and Divorce: Deed of Separation; Custody of Children.*—Under a deed of separation giving the father the custody of the children, with a covenant that the mother shall have access to them, with a privilege of having one reside with her, he cannot be restrained from taking the children abroad with him, whence he goes in the course of his duty.
2. *Ibid: Ibid; Covenant for Wife.*—It is no objection to such removal that the mother is not of pecuniary means to go to the children, or to bring one of them to her, under the privilege.

Appeal by John Percival Hunt, a surgeon in the army, from an order made by Pearson, J., restraining him from taking his children

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with him to Egypt, where he had been ordered on service. The action was brought by his wife, from whom he was separated by a deed of separation, which gave him the custody of the children, in which there was a covenant that she should have certain access to the children, on the allegation that carrying the children to Egypt would violate this covenant. The opinion set out other facts. As injunction was granted until the hearing of the cause, or the further order of the court, Dr. Hunt appealed.

BAGGALLAY, L. J. In this case a deed of separation, dated November 24, 1880, was executed by Dr. Hunt and his wife after proceedings for a judicial separation had been commenced by the wife. The deed appears to be a very reasonable deed, having regard to the circumstances. There were four children of the marriage, the eldest of whom, a daughter, was of the age of eleven; the other three were boys. The deed to a great extent follows the ordinary form of a deed of separation. The husband covenants to allow his wife to live separately from him, and to make her an allowance. Then follows a covenant as to the children. Dr. Hunt was a medical officer in the army, and was going to India on service, and it was stipulated that during his absence there the children should be placed in the care of his sister; and it was expressly provided that Mrs. Hunt might, if she pleased, take rooms in the house where they were to be. It is stated by Dr. Hunt, and is not disputed, that, during his absence in India, the children were maintained at his expense. There was a provision that, if the sister should die, or decline to continue the charge of the children, during Dr. Hunt's absence in India, the consent of Mrs. Hunt should be requisite to their being placed in other custody. This was until Dr. Hunt's return from India, on the happening of which event Dr. Hunt was to "resume the entire custody of the children." It is admitted that if the deed had stopped there, Dr. Hunt would have had sole control over the children. But some reliance was placed on the following clause, that "every change of guardianship of the said children that may become necessary or expedient shall in like manner be made with the consent in writing" of the wife. Assuming that this applies after the return from India, I think it cannot be read so as to prevent Dr. Hunt taking any of his children with him; it can only be taken to apply to their being placed under the care of some one else. The next clause is more important, "that full and free access to the said children shall always be accorded to the said E. A. Hunt to the extent at the least of her having the opportunity of spending one day in every fortnight with the children." It is to be observed that there is nothing said as to keeping the children in any particular place, or as to bringing them to her; it is only stipulated that she shall have free access to them—that is, that she shall have full liberty to come and see them. Then it is further stipulated that each of the children may spend six weeks, or any less period, with Mrs. Hunt, at one or at different times in every year, as she should request. What do these stipulations mean? Do they mean that the father shall keep the children at the place where Mrs. Hunt lives, or do they mean that when the children are with their father at any place to which his duties take him, she, if she wishes to see them, must find her way to them, and, if she wishes to have them stay with her, must provide for their being brought to her? The covenants can hardly be construed so as to impose an obligation on the father to keep the children near her: Suppose the father was quartered at Inverness and the mother was residing at Penzance, is he to take the children to her, or to keep them within an easy distance from her? She must, in my opinion, provide for their seeing her. The deed describes the husband as a surgeon in the army, and provides for what was to be done during his absence in India, whither he was about at once to go, and, of course, it must have been within the contemplation of the parties that he might be ordered abroad again. In that case was he to keep the children in England? The best construction I can put upon the covenant, is that, if the wife requires access to the children, she must provide the means for it: and if the father goes to any place to which he is ordered, and takes the children with him, she must follow them if she wishes to have access to them. The other branch of the case does not arise, whether, if the covenant had borne the construction contended for by Mrs. Hunt, the court would have declined to enforce it on the ground that it would not be for the benefit of the children to enforce it.

BOWEN, L. J. The case substantially turns on the stipulation that full and free liberty of access to the children shall be accorded to Mrs. Hunt. This means, no doubt, that she is always to be allowed to go to the children, and I think it includes this, that Dr. Hunt is not to do anything arbitrarily which would prevent her seeing them. Thus, for instance, if he were, without sufficient cause, to send them to Australia, I think the covenant would be broken. The question is, what is, accord-

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ing to Mrs. Hunt, reasonable liberty of access? Dr. Hunt is a medical officer in the army. Is it unreasonable that he should take his children with him to the place to which he is sent in the discharge of his duties? I think not, and I do not think that by so doing he is precluding the wife from having access to them. It is true that, as was urged, it puts a difficulty in the way of her seeing them; but, in my opinion, it is not an unreasonable difficulty, and I do not think that it to be inferred from the deed that he was not to be at liberty to take them with him to places to which he may be ordered to go in the ordinary course of his professional duties.

Fry, L. J. It is said that the wife, with the small income provided for her by the deed, cannot travel to a great distance; but that consideration cannot alter the construction of the deed, which, in my opinion, will not bear any construction precluding the father from taking his children with him to any place to which he is sent in the discharge of his duties. If we had taken Mrs. Hunt's view of the construction of the deed, the question would have arisen whether, having regard to the benefit of the infants, it ought to be enforced; but this question we have not to consider, as we think that the terms of the covenant do not prohibit Dr. Hunt from doing what he proposes.

Order reversed.

Westminster Hall.

The stranger who now visits London for the first time and turns his footsteps toward Westminster Hall, which has been hallowed by recollections of the past and by events the most exciting and dramatic in English history, will be disappointed to find his entrance barred and his presence excluded by orders issued by the English government owing to the recent attempts of dynamiters to destroy that renowned edifice and the House of Parliament. The great historic courts are no longer there, but at the point where the congested travel of four million and a half of people blocks up the way and where once stood the old Temple Bar, and extending from Carey street to the Strand there looms up on the horizon the great Royal Courts of Justice, the successor to old Westminster Hall, and you feel that you have passed at once from the mediveal ages into a new world and into the broad sunlight of the 19th century. Indeed the Royal Courts of Justice are typical of the present era, and stand forth as a monument to science, to the development of law, to the glories of civilization, and to the age in which we live.—*Legal Adviser.*

Strict Construction.

A recent case leaning towards supporting the insurer in the enforcement of conditions of forfeiture is the decision of the Supreme Court of the United States in Knickerbocker Life Ins. Co v. Pendleton (112 U. S., 696).

The policy provided that an omission to pay the annual premium on the day specified should cause the policy to be void without notice to any party interested. The insured gave for the premium, payable on the 14th July, 1871, in part payment of the premium, a draft drawn by him on his bankers, dated on the 14th of July, and payable three months after date without grace.

This draft was expressed to be for premium on the policy, and contains these words: "which policy shall become void if this draft is not paid at maturity." The agent gave a receipt of the company for the amount of the draft as if it were cash, specifying that it was the premium on the policy adding "which is hereby continued in force until July 14, 1872." The draft was unnecessarily presented for acceptance and acceptance refused. It was presented at maturity and not paid, but it was not protested for non-payment, and the court below held that on account of this omission the policy was not forfeited.

The Supreme Court reversed this decision. They held that on the one hand non-acceptance did not exempt from presenting for payment, because the condition of the agreement was that the policy should become void if "the draft was *not paid at maturity*," but, on the other hand, for the same reason, protest for non-payment was not essential.

According to the decision of the court the effect of the subsequent transactions, briefly stated, was—(1) That the condition in the policy itself of forfeiture was waived by receiving the draft and extending the time; (2) that the absolute extention of time contained in the receipt was qualified by the clause in the draft declaring that the policy would be void if the draft was not paid at maturity, and (3) under this clause the general rule as to negotiable paper was not relevant, but the condition was precisely that expressed —"non-payment at maturity"—not merely non-payment.

This is one of a large class of cases in which the judicial mind fluctuates between following the language which the parties have adopted—it may be very deliberately, it may be very carlessly—as affording the true and controlling definition of their rights, and on the other hand, looking at the transaction in the large, according to the common inferences

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and assumptions which men make in dealing according to usage, without thinking much of the precise language of their obligations.

The latter course often seems to be urgently dictated by a sense of justice or hardship, but on the other hand, when the courts follow it, the profession and the business public are left in awkward doubt as to what their rights are in other cases; while such a clear analysis and faithful following of the peculiar language of the contract which the parties have adopted, as is given by Mr. Justice Bradley in his opinion in this case, not only settle the controversy in accordance with the contracts the parties have made, but clears the way of every reader of the decisions in dealing with other similar cases.

For our part, we are more and more convinced that there is great virtue in the doctrine which some of the strongest Judges in England and in this country in recent times are inclined to favor—that parties are free within the limits of legality to make whatever stipulations they like, and that in the absence of fraud or mistake specifically alleged, justice is safely administered by holding them respectively to the language of the obligations in which they have expressed to each other their agreement.

This principle may well be administered with the qualifications implied in another, viz., that language is not to be considered as language alone, as that a given phrase or clause is to be read with the same meaning in whatever contract it may occur; but nevertheless, that after the clauses that the parties have adopted have been read in the light which surrounding circumstances afford, the intention of the parties is to be gathered from the *language* of the clause and not from the *circumstances*.—*N. Y. Daily Register:*

The Courts.

IN EQUITY.—New Suits.

August 10, 1885.

9568 John W. P Myers v. Maurice J. Adler et al, For acct. and to construe will. Com sol, F H. Mackey.

August 11, 1885.

9569 Susan Hopp v Charles Holden et al. To substitute trustee. Com sol, John A. Hayward.

9570 Alice R. Thomas v. James H. Thomas. For divorce. Com sol, Chas A. Elliot.

August 12, 1885

9571. James Thompson v Charles Hyatt et al Creditor's bill. Com sols, Birney & Birney.

9572. David Howard v. Andrew J. Biedler. For an account Com sol, J. Critcher

9573 Clara Thackeray v. Thomas Thackeray. For divorce. Com sols Fendall and Lee.

9574. Catharine Slade v William H. Slade. For divorce. Com sols, Birney & Birney.

August 13, 1885.

9575 The George T. Smith Middling Purifier Co. v. G. W. Cissel & Co. Injunction. Com sol, H H. Bliss. Defts Sol, J.. Bradford.

CIRCUIT COURT.—New Suits at Law.

August 10, 1885.

26325. Joseph Weill v. Hart Cohen. Notes, $260 92. Piffs atty, N H. Miller.

26326 Same v. Frederick Selinger. Notes, $501. Piffs atty, Same.

26327. Faulkner, Page & Co. v. Austin P. Brown. Acct., $4215 65 Piffs atty J M Vale.

26328. Thomas Somerville & Son v. John Lyon. Acct, $616 74. Piffs attys, Riddle, Davis & Padgett.

26329 Same v. George E. Hutchins. Acct., $756 50 Piffs attys, Same.

26330. Fred. Bergner & Co. v. Bernard Silverberg. Acct. $244.51. Piffs atty, H. W. Garnett.

26331. Charles H. Parker v. William J. Aiken. Acct, $130. Piffs atty, B. F. Leighton.

August 11, 1885.

26332. Michael McDonnell v. Stephen Moffit. Acct, $325. Piffs atty, W. P. Laselle.

August 12, 1885.

26333. Augustus Burgdarf v. Eliza Myers et al. Ejectment Piffs atty, E. H. Thomas.

26334. Same v. Augustus Malachia et al. Ejectment Piffs atty, Same.

26335. Same v. Eliza Davis. Ejectment. Piffs atty, Same.

26336. Charles H. Parker v. John Miller. Acct, $685. Piffs atty, B. F. Leighton.

26337. W. & J. Sloane. v. Albert M. Gibson. Acct, $613.95. Piffs atty, N. Wilson

26338. Wright Rives et al. v. Middleton & Co. Acct, $31099 84. Piffs atty, C. A. Elliot.

26339. Thomas Z Hawkins v. Samuel A. H. Marks, jr. Judg't of Justice Richards, $54.18. Piffs atty, D. O'C. Callaghan.

26340. The United States of America v. William Irving. Acct $200. Piffs atty, A. S. Worthington

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business. August 14th, 1885.

In the matter of the Estate of Emma Haywood, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Matilda Florance.

All persons interested are hereby notified to appear in this court on Friday, the 11th day of September next at 11 o'clock, a. m., to show cause why the said Will should not be proved and admited to Probate and Letters Testamentary on the estate of said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WM. M. MERRICK, Justice.
Test: 33 H. J. RAMSDELL, Register of Wills.
LEON TOBRINER, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. August 14th. 1885

In the matter of the Estate of Jehu W. Elliott, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Mary Elliott.

All persons interested are hereby notified to appear in this court on Friday, the 4th day of Sept. next at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WM. M. MERRICK, Justice.
Test; 33 H. J. RAMSDELL. Register of Wills.
E W. GRANT, Solicitor

THIS IS TO GIVE NOTICE.

That the subscriber of Washington, D. C, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Nathan Blum, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of August, 1885,
DAVID BLUM,
LEON TOBRINER, Solicitor. 33 Administrator.

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Legal Notices.

THIS IS TO GIVE NOTICE.
That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Selina C. Pendleton, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscribers on or before the 7th day of August next; they may otherwise by law be excluded from all benefit of the said estate.
Given under our hands this 7th day of August, 1885.
ROSE B. DARRELL,
E. C. PENDLETON.
32 Executors.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration, on the personal estate of John J. Gorman, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 7th day of August next; they may otherwise by law be excluded from all benefit of the said estate,
Given under my hand this 7th day of August, 1885.
M. B. GORMAN,
32 Administrator.
NEAL T. MURRAY, Solicitor.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Adminstration on the personal estate of Susan B. Porter, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of August next; they may otherwise by law be excluded from all benefit of the said estate
Given under my hand this 7th day of August, 1885.
JOHN W. ROSS,
32 Administrator.

THIS IS TO GIVE NOTICE,
That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Caspar Schaefer, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of August next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 7th day of August, 1885.
CATHARINE SCHAEFER.
LOUIS SCHADE, Solicitor. 32 Executrix.

THIS IS TO GIVE NOTICE,
That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Henry Isemann, late of the District of Columbia deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of August next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 6th day of August, 1885
CATHARINE ISEMANN,
FERDINAND SCHMIDT, Solicitor. 32 Executrix.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 31st day of July, 1885.
JOHN A. LOUDON
v. } No. 9378.
WM. G. FLOOD ET AL.
On motion of the plaintiff, by Mr. C Carrington, his solicitor, it is ordered that the defendants, William G. Flood, Samuel Mason and Harriet Ann Dorsey, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.
By the Court. A. B. HAGNER, Justice.
True copy. Test: 31 R. J. MEIGS, Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Holding a Special Term for Orphans' Court Business, August 7th, 1885.
In the matter of the Estate of E. P. Walsh alias Edward Walsh, late of Washington, D. C., deceased
Application for Letters of Administration on the estate of the said deceased has this day been made by H. J. Daly, a creditor of said deceased.
All persons interested are hereby notified to appear in this court on Friday, the 4th day of September next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. WM. M. MERRICK, Justice.
Test: 32 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 17, 1885.
In the matter of the Estate of Susan Viegle, late of the District of Columbia, deceased.
Application for Letters of Administration on the estate of the said deceased has this day been made by Susan Hopp.
All persons interested are hereby notified to appear in this court on September the 4th A D. 1885, next, at 11 o'clock, a m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. WM. M MERRICK, Justice.
Test: 32 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 7th day of August, 1885
PAULINE SINK
v. } No. 4563. In Equity.
FREDERICK SINK.
On motion of the plaintiff, by Mr. Nehemiah H. Miller, her solicitor, is it ordered that the defendant, Frederick Sink, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.
By the Court. WM. M. MERRICK, Justice.
A true copy. Test: 32 R J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.
That the subscriber, of Greensboro, N. C., hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Hunter Brooke, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of August next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 7th day of August, 1885.
FERDINAND SCHMIDT. LORENZO A BAILEY
32 Solicitor. 511 7th St., N. W. Administrator.

THIS IS TO GIVE NOTICE.
That the subscribers, of Port Tobacco, Md., and Washington, D. C. have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration W. a on the personal estate of Mary C. McDonnell, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscribers on or before the 16th day of July next; they may otherwise by law be excluded from all benefit of the said estate.
Given under our hands this 16th day of July, 1885.
F. MARCELLUS COX.
30 GEORGE E. HAMILTON.
Administrators w. a.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 22d day of July, 1885.
JOHN STEWART
v. } No. 9538. Equity Docket. 25.
EUPHEMIA STEWART.
Application of divorce on the ground of desertion.
On motion of the plaintiff, by Mr. C. Storrs, his solicitor, it is ordered that the defendant, Euphemia Stewart, cause her appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.
By the Court. A. B. HAGNER, Justice.
True copy. Test: 30 R. J. MEIGS, Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 22d day of July, 1885.

JOHN H. KETCHAM v. JAMES W. PATTERSON. } No. 9541. Eq. Doc. 25.

Bill to quiet title.

On motion of the plaintiff, by Messrs. Birney & Birney his solicitors, it is ordered that the defendant, James W Patterson, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 30 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Thomas T. Scarff, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of July, 1885.

ANGELINA SCARFF,
ABERT & WARNER, Solicitors. 31 Executrix.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Howard Johnson, late of the District of Columbia, deceased.

All persons having claims again the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 30th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of July, 1885.

31 HENRY A. JOHNSON
ABERT & WARNER, Solicitors Administrator.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business. Letters Testamentary on the personal estate of Samuel F. Conover, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 28th day of July, 1886 next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of July, 1885.

31 SAM'L V. NILES,

THIS IS TO GIVE NOTICE:

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Charles Clark, late of the District of Columbia, deceased

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of July next: they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of July, 1885.

JOHN J. WILMARTH.
31 Administrator.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business. Letters of Administration c. t. a. on the personal estate of James Torphy, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27d day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of June, 1885.

BENJAMIN F. RITTENHOUSE,
GORDON & GORDON, Solicitors. 31 Administrator c. t. a.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 31st day of July, 1885.

ANDREW J. AVERY v. JULIA A. JOHNSON ET AL. } No. 9556.

On motion of the plaintiff, by Mr. Irving Williamson, his solicitor, it is ordered that the defendants Julia A. Johnson and William Johnson, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
True copy. Test: 31 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John Wunderlich, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 31st day of July, 1885.

JOANNA TURNER.
JUDSON T. CULL, Solicitor. 31 Admisintratrix.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

JOHN H. KING et al. v. WILLIAM WATSON et al. } Eq 9441. Docket 24.

Jesse H. Wilson and George W. King, trustees herein, having reported the following sales, to wit:

To John F. Dyer, lot 12 in square 15, Washington, D. C., for $4,724.84.

To James Manogue, parts of lots 8 and 9, in the "Slip," in Georgetown, D. C., for $3,125.00.

To Jesse V. N. Huyck, part of a tract of land called "White Haven," in Washington County, for $1,141.28.

Being all the property in this cause decreed to be sold, and in the aggregate amounting to the sum of $8,991.12.

And which sales and the property sold are more fully described in said trustees' report, and the proceedings herein.

It is, this 28th day of July, A. D. 1885, ordered by the Court, on motion of complainants' solicitor, that said sales be confirmed, unless cause to the contrary be shown on or before the 1st Tuesday of September, 1886.

Provided a copy of this order be published in the Washington Law Reporter, once a week for three consecutive weeks before said day.

A. B. HAGNER.
A true copy 31 Test: R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

ELIZABETH M. GULICK v. MARY E GULICK et al. } 9454. Eq. Doc. 24

Upon consideration of the trustee's report of sales, it is by the Court, this 29th day of July, A. D. 1885, ordered, adjudged and decreed, that the sales so reported stand ratified unless sufficient cause to the contrary be shown to the Court on or before the 1st day of September next.

Provided a copy of this order be published once a week for three successive weeks prior to said last mentioned day.

The report shows amount of sales to be $23,388 43-100.

A. B. HAGNER.
A true Copy. Test: 31 R. J MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 31st, 1885

In the matter of the Estate of John A. B. Leonard, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by Sallie Johns Peter.

All persons interested are hereby notified to appear in this court on Friday, the 4th day of Sept., next, at 12 o'clock, m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B. HAGNER, Justice.
Test: 31 H. J. RAMSDELL, Register of Wills.
H N. SOBON, Solicitor.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 22d day of July, 1885.

WILLIAM W. METCALF
v.
WILLIAM DELANEY, C. H. HOLDEN and others. } No. 9540.

On motion of the plaintiff, by Messrs. Hagner & Maddox, his solicitors, it is ordered that the defendants, William Delaney and C. H. Holden, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 30 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Thomas I. Middleton, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 22d day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of July, 1885.
30 B. F. LEIGHTON, Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 17th, 1885.

In the case of Anson S. Taylor, executor of Isaac Bradley, deceased, the executor aforesaid has, with the approval of the court, appointed Friday, the 14th day of August, A. D. 1885, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 29 H. J. RAMSDELL, Register of Wills

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

HENRY CLARK ET AL.
v.
HENRY HOHMAN ET AL. } 9338. Eq Doc. 24.

The trustee, Randall Hagner, having reported to the Court that he has sold the real estate in the proceedings in this cause mentioned, to wit, all of original Lots six, seven and eight, in Square west of Square numbered six hundred and ninety-five, on the ground plat or plan of the city of Washington, in the District of Columbia, to E. Kurtz Johnson, at and for the sum of $7606.48, and that the said purchaser has fully complied with the terms of sale:

It is, therefore, this 17th day of July, A. D. 1885, ordered, that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 17th day of August, A. D. 1885.

Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said last named day.

A. B. HAGNER, Asso. Justice.
A true copy. Test: 29 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 31st, 1885.

In the matter of the Estate of Joseph Trimble, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by James Trimble and Mary Blakely.

All persons interested are hereby notified to appear in this Court on Friday, the 4th day of Sept. next, at 12 o'clock, M., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice
Test: 31 H. J. RAMSDELL, Register of Wills.
J. T CULL, Solicitor.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Emily Beale, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23rd day of July next; they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 23rd day of July, 1885
30 JAMES H. SAVILLE, Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 24th, 1885.

In the matter of the Estate of Eleanor Miller, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Charles Miller, who prays that Horatio Browning may be associated with him as co-administrator.

All persons interested are hereby notified to appear in this court on Friday the 14th day of August next at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 30 H. J. RAMSDELL, Register of Wills.
EDWARDS & BARNARD, Solicitors.

THIS IS TO GIVE NOTICE.

That the subscriber, of Washington City, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Adam Kramer, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of August, 1885
33 MARGARETH KRAMER, Executrix.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of Seth Ledyard, Phelps, late of the District of Columbia, deceased

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of August, 1885
33 SEVELLON A. BROWN.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Benjamin Alvord, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 14th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of August, 1885.
33 EMILY LOUISE ALVORD.
GEO E HAMILTON, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

LENA HOFFMAN
v.
WILLIAM THOMA et al } No. 9408. Equity Doc. 24.

Benjamin F Leighton, trustee in this cause, having reported a sale of all the real estate and premises described in these proceedings to one Robert Reyburn, jr., for the sum of $1650, it is this 25th day of July, A. D. 1885, ordered that said sale be finally ratified and confirmed unless cause to the contrary be shown on or before the 1st day of September, A. D. 1885.

Provided, that a copy of this decree be published in the Washington Law Reporter, once a week for three successive weeks before that day.

By the Court.
A true copy. 30 Test: R. J. MEIGS, Clerk.

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Washington Law Reporter

WASHINGTON - - - - - - - - August 22, 1885.

GEORGE B. CORKHILL - - - EDITOR

JUDGE POWELL in his opinion in the Supreme Court of Utah in the case of The United States v. Cannon, has some very pertinent remarks upon the reason of the law prohibiting bigamous or polygamous marriages in which he says:

If we consider the evident purpose of the "Edmonds act," and view it in the light of the exigency which caused its enactment, the conclusion seems inevitable that its purpose and intent is to protect monogamic marriage. It does not appear that its aim is to punish mere sexual crimes. This seems to have been the view taken by Congress. See Congressional Record, March 15, 1882, p. 34; but, however that may be, it seems to be the view that is supported by reason and authority.

Marriage, as understood in Christendom, means the "voluntary union of one man and one woman, to the exclusion of others." The term, therefore, is not correctly applied to the union of one man with more than one woman. Story on Conflict of Laws, 8th ed., 184, note. It is the parent and not the child of society, for it is the very basis of the whole fabric of civilized society. Story on Conflict of Laws, 185. It is something more than a mere contract. It is rather to be deemed an institution of society, founded upon the consent and contract of the parties; and in this view it has some peculiarities in its nature, character, operation and extent of obligation, different from what belongs to ordinary contracts. Story, 185. No legislation can be supposed, more wholesome and necessary, in the founding of a free, self governing commonwealth, fit to take rank as one of the co-ordinate States of the Union, than that which seeks to establish it upon the basis of the idea of the family, as consisting in and springing from the union for life of one man and one woman in the holy estate of matrimony; the sure foundation of all that is stable and noble in our civilization; the best guaranty of that reverent morality which is the source of all beneficent progress in social and political improvement; Murphy v. Ramsey, 114 U. S., 45. Marriage is the foundation of the home, and upon it is builded the entire superstructure of society. It finds its defence in every human heart, which jealously guards the one object of its affection. It is the outgrowth of progress and enlightenment, for it recognizes that the wife and mother is the equal of the husband and father.

There is far more to the marriage relation than the mere gratification of passion, or the procreation of children. The wife, taking her place by her husband's side, his equal, his counselor, his friend, makes of him a perfect man. Together they share the sorrows of life; together they enjoy its blessings. When each is true to the other, they present a union not made by man, and, as they pass along life's pathway, their very example is of infinite benefit to mankind. Anything which tends to bring this relation into disrepute is an injury to the world. Anything which lowers the popular appreciation of the relation and destroys the good that marriage does the world by mere example, is an evil which the law should correct.

Society with all its ramifications being founded upon marriage, it is upon grounds of public policy that it is regulated and protected. When the act in question was passed, Congress was aware that, in some of the territories, there are people who believe that it is right for a man to take and live with more than one wife. That there are men who not only marry more than one woman, but who say to the world by conduct and by words, that two or more women with whom they are living are their wives. The lawmaking power saw that the mere fact of a plural marriage is an evil example. That the living and associating with two or more women as if married to all, tends to weaken the popular appreciation of true marriage, and this is detrimental to society. Therefore, for the purpose of protecting the marriage relation, the law under discussion was passed. It is directly aimed at the suppression of polygamy and the polygamous

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household as an evil example, dangerous in its tendency to the family relation as recognized by this Nation. It was not the offence against chastity merely, but the offence against the family, which Congress intended to suppress.

Supreme Court District of Columbia

AT CHAMBERS.

IN THE MATTER OF THE PETITION OF THE State of Mississippi *vs.* M. J. Durham, First Comptroller U. S. Treasury.

For Mandamus.

This is an application on behalf of the State of Mississippi to compel the First Comptroller to take the necessary steps towards issuing a warrant for the payment to the State of $5,308.50, which sum is admitted to be due and payable from the Treasury under the acts of March, 1817 (3 Stat., 349), and of September, 1841 (5 Stat., 457), unless the general Government be entitled to set-off against that demand, $413,084.66 being the part of the direct tax of twenty millions which was apportioned to the State of Mississippi by the 8th section of the act of 1861, lib. 45 (12 Stat., 294) as the part of said tax apportionable to the people of that State by virtue of the terms of the Constitution which determines the quantum of any direct tax which is to be borne by the people within each State respectively. The Comptroller admits in his return to the rule to show cause, and still more emphatically in his official opinion upon the claim, filed on the 4th of June, 1885, a copy of which he has submitted here as his argument on the present application. He declares that, according to his opinion, the State is no manner indebted to the United States in any amount for direct taxes or otherwise, but he maintains in that opinion and by his return to the rule to show cause, that he is, nevertheless, bound to shut his eyes to his clear convictions, that the act of 1861 could not, constitutionally, and did not create and was never designed to create a debt against the States themselves by the imposition of the tax; because a certain auditor, on the 15th of May, 1868, made a certificate that he had examined an adjusted an account and found the precise sum mentioned in the 8th section of the act of 1861 ($413,084.66) to be due by virtue of said act, and thereupon the then Comptroller, on the 29th of May, 1868, certified to the same as due and payable in said certificate of May, 15. The Comptroller submits for the decision of this tribunal whether he is not bound, in the consideration of the present claim for moneys falling due in 1884, under the said acts of 1817 and 1841, to regard the certificates of the Auditor and Comptroller of 1868 as a definite adjudication operating in every case and through all time upon the officers of the Treasury; that the State of Mississippi is a debtor to the United States for the aforesaid quota of the direct tax. If submission to its jurisdiction could authorize a judicial tribunal to decide all questions which are mooted between the powers, there would be very little difficulty in dealing with the inquiry whether, in a *subsequent case*, an accounting officer of the Treasury is bound and estopped by a previous construction of a statute by another accounting officer, and which he is convinced is erroneous, because that construction has assumed the form of an account stated, and although it be apparent that such statement of account is based upon no evidence or any fact outside the terms of the statute itself.

When there is no jurisdiction, it does not belong to the proper functions of a court to give an opinion upon a matter submitted for the guidance of parties or tribunals even where the parties consent and invite such an opinion. The whole business of the court is confined to giving decisions to cases properly before it (Wills on Jurisdiction, sec. 13); hence I am not acquitted of the duty of first inquiring whether there be any jurisdiction upon the case made by the petitioner and return, to grant a mandamus against the Comptroller, the result of which would be to compel the payment of a pure money demand against the Treasury of the United States, which the United States, through that officer, refuses to pay. This inquiry does not involve a discussion of what are ministerial as distinguished from discretionary acts of executive officers—not that other question which was adjudicated by

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this court in 3 Mackey, 229 (U. S., ex rel. Hoe v. Butterworth) whether if any executive officer admits that he ought to perform a duty to a citizen which has been confided by law to his official discretion, in a *matter in which the Government is not in any sense an adverse party*, and he declares in his return that, in his judgment, he ought to perform the duty. That, in deference to the ruling of another officer, he declines to discharge that duty, the court will enforce the execution of that duty by a mandamus. But the question here is simply whether if a claim be presented to the Treasury and rejected for reasons which, to the judicial mind, might seem utterly untenable, it is competent for a court to enforce its payment by mandamus. Section 236 of the Revised Statutes provides that "all claims and demands whatever by the United States or against them, and all accounts whatever in which the United States are concerned, either as debtors or creditors, shall be settled and adjusted in the Department of the Treasury. The organization of the Department is so comprehensive, so thorough, so exact, it is supplied not only with skilled accountants, but special law officers, and besides has, on proper occasion, the right to call in aid the opinion of the Attornes-General of the United States, that it seems fully equipped for the discharge of every fiscal duty and exigency. And, therefore, independently of general considerations of abstract policy, the Government would seem to be justified in maintaining in all its integrity the dogma that it cannot, by any form of process, base its rights of property, subjected to the arbitrament of a judicial tribunal, without its explicit consent in due form of law.

The Supreme Court of the United States has, in three several cases, been so emphatic and precise in their utterance on this point that nothing else is appropriate to this opinion but some citation from those cases.

In The United States v. Guthrie, 14 How., 303, the court says:

"The only legitimate inquiry for our determination upon the case before us is this, whether, under the organization of the Federal Government or by any known principle of law, there can be asserted a power in the circuit court of the United States for the District of Columbia, or in this court, to command the withdrawal of a sum or sums of money from the Treasury of the United States to be applied in satisfaction of disputed or controverted claims against the United States. This is the question. The very question presented for our determination and its simple statement, would seem to carry with it the most startling consideration, nay, its unavoidable negative, unless this should be prevented by some positive and controlling command; for it would occur *a priori* to every mind that a Treasury not fenced round and shielded by fixed and established modes and rules of administration, but which could be subjected to any number or description of demand, assorted and sustained through the undefined and undefinable discretion of courts, would constitute a feeble and inadequate provision for the great and inevitable necessities of the nation. The Government, under such a regime or rather such an absence of all rule, would, if practicable at all be administered, not by the great Departments ordained by the Constitution and laws and guided by the modes therein prescribed, but by the uncertain and perhaps contradictory action of the court in the enforcement of their views of private interest."

Again, Russell v. Walker, 11 How., 290, that court says:

"It is well settled, too, that no action of any kind can be sustained against the Government itself for any supposed debt unless by *its consent under some special statute allowing it* which is not pretended to exist here. . . . The sovereignty of the Government not only protects it against suits directly, but against judgments even for costs when it fails in prosecutions. Such being the settled principle of our system of jurisprudence, it would be derogatory to the courts to allow the principle to be evaded or circumvented. They could not, therefore, permit the claim to be enforced circuitously by mandamus against the Secretary of the Treasury, when it could not be directly against the United States, and when no judgment on or for it had

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been obtained against the United States."

In that most familiar case of Kendall v. U. S., ex rel. Stokes, 12 Peters, Judge Thompson, speaking for the court, says:

"These claims now were of course upon the United States through the Postmaster-General. The real parties to the dispute were, therefore, the relators, and the United States could not, of course, be sued or the claims be in any way enforced against the United States without their consent obtained through an act of Congress by which they consented to submit these claims to the solicitor of the Treasury to inquire into and determine the equity of the claims, and to make such allowance therefor as, upon a full examination of all the evidence, should seem right according to the principles of equity. And the act directs the Postmaster-General to credit the relators with whatever sum, if any, the solicitor shall decide to be due to them for or on account of any such service or contract. . . . Under this law the Postmaster-General is vested with no discretion or control over the decision of the solicitor, nor is any appeal or review of that decision provided for by the act. The terms of the submission was a matter resting entirely in the discretion of Congress, and if they thought proper to vest such a power in any one, and especially as the arbitrator was an officer of the Government, it did not rest with the Postmaster-General to *control Congress* or the *solicitor in that office*. The right to the full amount of the credit according to the report of the solicitor having been ascertained and paid by law (a special act of Congress) the enforcement of that right falls properly within judicial cognizance, . . . page 613. The act required to be done by the Postmaster-General is simply to credit the relators with the full amount of the award of the solicitor. This is a precise, definite and ministerial act about which the Postmaster-General had no discretion whatever; the law upon its face shows the existence of accounts between the relators and the Post-Office Department. No money was required to be paid and none could have been drawn out of the Treasury without farther legislative provision if this credit should overbalance the debit against the relators. But this was a matter with which the Postmaster-General had no concern. He was not called upon to furnish the means of paying the balance if any should be found. He was required simply to give the credit."

There is no deliberate expression in any subsequent opinion of the Supreme Court which enlarges these extreme and narrow and rigid limitations of the power of Courts to issue a mandamus, the effect of of which would be to compel the payment of money from the Treasury. In the case of Rusiele it will be observed that the court says that the mandamus is, in effect, a suit against the United States. That a Court must not permit the United States to be sued by a mandamus directed to one of its officers where it could not be sued directly unless by its own consent under some special statute allowing it. Now it does not require argument to manifest that a refusal by an officer of the Treasury Department whose general duty under the law it is to allow and take steps to issue a warrant for the payment of any claim, is a refusal of the claim by the United States for the time being; that a mandamus against him to compel the allowance and payment thereof, is a suit against the United States, and that it is none the less a suit against the United States because the ground or notices of refusal to allow may be obviously and notoriously without legal justification. In other words, that no error of judgment or capriciousness of conduct can destroy, for the time being, the quality of agent and actor in the name and on behalf of the govenment of the proper treasury official in disallowing the claim of any State or individual for money due or alleged to be owing by the United States.

For these reasons, finding this court without jurisdiction to entertain the petition, and without authority to pass upon the validity of the objection which the Comptroller interposes against the issue of a warrant in favor of the relator, it only remains to refuse the writ of mandamus as prayed which is accordingly done.

ALL men are fools, and with every effort, they can only differ in degree.—BOILEAU.

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Supreme Court California.

SHARON *vs.* SHARON.

Divorce: Case in Equity; Alimony; Appeal; Rehearing.—On a petition for rehearing, the rulings that an action for divorce is a case in equity, and that an appeal lies to the Supreme Court from the judgment of the Superior Court granting a divorce; and that an order made *pendente lite* by the Superior Court, directing the payment of alimony, is also appealable, affirmed, and a rehearing, as to such points, denied. A rehearing, however, granted on the question as to the character of bond necessary to stay proceedings upon the order for the payment of alimony.

Petition for a rehearing.

ROSS, J. In the opinion recently delivered in this case we held, first, that an action for divorce is a case in equity, and that an appeal lies to the Supreme Court from the judgment of the superior court granting a divorce, and, second, that an order made *pendente lite* by the superior court directing the payment of alimony, is also appealable. In the petitions for rehearing on file it is said by counsel for the plaintiff that, in holding that the order for the payment of alimony is appealable, we have decided exactly contrary to several former decisions of this court. Church v. Church, No. 9,405; MacNevin v. MacNevin, 63 Cal., 186; *Ex parte* Cottrell, 59 Cal., 417; and *Ex parte* Perkins, 18 Cal., 60, are the cases in which it is said by counsel that an opposite conclusion was announced. In Church v. Church, no order *pendente lite* for the payment of alimony was made by the superior court. The question as to whether such an order was or was not appealable, could not, therefore, by any possibility, have arisen in the case. The trial court there granted the plaintiff a divorce, and, in its decree granting the divorce, awarded the plaintiff permanent alimony and a certain stated sum for fees of counsel. From that decree the defendant gave notice of appeal to this court, and, within statutory time, executed an undertaking, pursuant to section 941 of the code of civil procedure, in the sum of three hundred dollars. There can be no sort of doubt that the notice and undertaking thus given perfected the appeal to this court from the final judgment of the superior court. The only question in Church v. Church was to a stay of proceedings upon the judgment. The only undertaking given by the appellant was the one in the sum of three hundred dollars for the payment of such costs and damages as might be awarded on the appeal, but the appellant subsequently applied to the superior court to fix the amount of an undertaking to be given by him for the purpose of staying all proceedings on the judgment, and the application being denied by the superior court, a similar application was made here and denied—no opinion being delivered. This was the case of Church v. Church, and all of it, which is cited and deliberately stated by counsel for the plaintiff in the present case to have decided that there was no appeal from an intermediate order in an action of divorce directing the payment of alimony. No argument can make plainer the fact that no such question was, or could have been, involved in Church v. Church. And so with respect to the other cases cited by counsel for plaintiff. A bare statement of the facts will clearly show that in none of them has this court ever decided contrary to what we have held in the present case. In MacNevin v. MacNevin, 63 Cal., 186, which was an action for divorce, the district court had, pending the action, made orders from time to time directing the defendant to pay certain sums as alimony, which orders, though enforceable by executions were, in fact, never enforced. The court, after trial, ordered "that plaintiff's prayers for divorce be denied, and that defendant have judgment for costs." After the making of this order, on motion of defendant's counsel, all the orders formerly made granting to the plaintiff alimony were vacated, and from this last order the plaintiff appealed as from an order made after final judgment. But the court held that the record only showed an *order* for judgment, and, therefore, that the order setting aside the orders granting alimony was not an order made after final judgment, and, consequently, not appealable.

In *Ex parte* Cottrell, 59 Cal., 419, this court distinctly said: "Whether any undertaking could be given which would operate as a stay of the execution of the order, for the payment of alimony, pending the appeal, or *whether any appeal lies from such an order, are questions which do not necessarily arise in this case, and we therefore express no opinion upon them.*" Yet counsel for the plaintiff here says that, in *Ex parte* Cottrell, we decided that no appeal lay from an order directing the payment of alimony. *Ex parte* Perkins, 18 Cal., 60, is the only other case in which it is said by plaintiff's counsel that this court has held that there was no appeal from an order granting alimony. In that case Perkins was, by an order of the court, directed to pay a sum of money for expenses incurred by his wife in the action for divorce, and having refused to do so, was imprisoned, and sought to be discharged from imprisonment on *habeas corpus*, upon the ground that the sum adjudged against him was a debt

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within the meaning of that provision of the constitution which secured the citizen against imprisonment for debt, except for fraud. The court held, and properly held, that the amount ordered to be paid by the husband was not a debt within the meaning of the constitution; that the husband did not owe the wife any specific sum of money, but he owed a duty to her which might be enforced by order of the court, compelling him to pay her money. The question there—the case being *habeas corpus*—involved only *the power* of the court to make the order. No question of appeal was involved, nor could the regularity of the proceedings be in any way considered. There is no inconsistency between that case and our ruling in the present one. We have never said that an order for the payment of alimony was a final judgment in the sense that a judgment for the payment of money from one man to another is, but we said, as did the supreme courts of Illinois and Kentucky, in the cases cited, that it was *in the nature* of a final judgment possessing the essential elements of such judgment, and which could be enforced not only by execution against property but by imprisonment of the body of the delinquent. We repeat the fact that the question under consideration has never before been passed upon in this State, and that it is with us, as the case of Blake v. Blake was with the Supreme Court of Illinois, one of first impression. The court there says: "The question raised is one that has never been passed upon by this court, but, upon first impression, we are of opinion the appeal will lie. It is a money decree, is for a specific sum and is payable absolutely. No execution has been as yet awarded, but the court has the undoubted authority to award an execution, or, if payment was wilfully and contumaciously refused, the decree might be enforced by attachment as for contempt, or payment might be coerced by sequestration of real or personal estate. By one mode or the other, the decree could be enforced, and if the defendant has property, it could, in some way consistently with the practice in courts of chancery, be subjected to its payment. Such a decree does not seem to us to be merely interlocutory. It is more in the nature of a final decree, and if no appeal lies, this case affords an instance of a money decree against a party from which no relief can be had, no matter how unjust or oppressive. This ought not to be. It is no answer to this position to say defendant can have this decree against him reviewed on appeal or error, after final decree in the original cause. Of what avail would that privilege be to him then? The litigation might be protracted and years elapse before any final decision could be reached. In the meantime he has been imprisoned for disobedience to the decree or his property under process of law been subjected to the payment of the sum decreed. Nor does the fact an appeal is allowed impose any hardship not incident to other money decrees, from which appeals may be prosecuted. On the theory, alimony is for the immediate benefit of the wife, to enable her to prosecute or defend her suit against her husband on terms of equality, the only serious result would be to delay the litigation until the propriety of the decree for temporary alimony and solicitors' fees could be determined in the appellate court. On the contrary, if an appeal should be denied, it might subject defendant to very great hardships in many cases, as the sequel will show." 80 Ill., 523. The allowance of alimony is largely discretionary with the trial court, and will, therefore, be interfered with by the appellate court only in cases of abuse of discretion. Ordinarily, in actions for divorce, the marriage relation is not controverted, and should frivolous appeals be taken, it will be an easy matter to impose such penalty as will put a stop to the practice. But in cases where the fact of marriage is the real issue, no alimony should of right be paid until the fact of marriage, or no marriage, is properly determined, for the obvious reason that there can be no such thing as alimony unless the relation of husband and wife in fact exist.

There is, however, some question as to the character of bond necessary to stay proceedings upon the order for the payment of alimony.

With respect to that question, and to that only, there is some inconsistency in the opinions of the court, and upon that question, and that only, we desire to hear further argument, and for that purpose and to that extent only, grant a rehearing.

THORNTON, J., MCKINSTRY, J., MORRISON, C. J., and SHARPSTEIN, J., concurred.

MYRICK, J., concurring. I agree with the views presented by ROSS, J., down to the reasons given for a rehearing. I am satisfied with the judgment heretofore given. I wish to add the following to what has been said in favor of the appellate jurisdiction of this court:

Independent of what has been already said, I am of opinion, that under the present constitution, there can be no question as to the appellate jurisdiction of this court in the case of an alimony order. I base this view on the terms of the constitution, viz.: Article

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vi, section 5: "The superior court shall have original jurisdiction *in all cases in equity*;" Article vi, section 4: "The Supreme Court shall have appellate jurisdiction *in all cases in equity*." Wherever and whenever a superior court has jurisdiction to take any step or proceeding, or make any order, in any case in equity, of that step, proceeding or order, the Supreme Court has appellate jurisdiction. The legislature may provide machinery—it may declare when the appeal may be taken, as in regard to orders which involve the merits, or necessarily affect the judgment, it has done—but neither by direct action nor by omission can the appellate jurisdiction of this court be abridged; it is given by the constitution in such plain and unequivocal words that it cannot be shorn off.

If, then, an action to have the validity of an alleged marriage determined and declared, or for divorce, be a case in equity, it conclusively follows that any order, step or proceeding, which the superior court has jurisdiction to make in such action, is subject to review by this court.

By way of contrast and to show more clearly if need be, the meaning of the above quoted clauses of the constitution, I quote as to probate matters: Article vi, section 5, "the superior court shall have original jurisdiction . . . of all matters of probate;" Article vi, section 4, "the Supreme Court shall have appellate jurisdiction . . . in all such probate matters as may be provided by law."

In probate, appellate jurisdiction is given in such matters, only, as the legislature may provide; while in equity cases the appellate jurisdiction is as broad and extensive as is the original jurisdiction.

It has been repeatedly held that where appellate jurisdiction is given, and no machinery is prescribed, the appellate court will furnish machinery, to the end that the right of review be not lost. Houghton's Appeal, 42 Cal., 35; People v. Jordan, 4 West Coast Rep., 84.

As to whether the action now under consideration is a case in equity, has been considered in the opinion heretofore filed, and I do not deem any addition in that regard necessary or useful.

The Statistics of Reversals.

The American Bar Association meeting at Saratoga are to take up a subject which is trite enough, yet on which public interest is as fresh as a sense of constant inconvenience can make it. No doubt a great many of the profession are weary of hearing it mentioned but they as well as their clients are more weary of the thing itself than any one can be of the name or discussion of it.

Great progress has been made within the memory of the present generation in the acceleration of legal remedies; and further progress is sure to be made within our own time. There is no reason why business men should turn aside from the courts and try the slipshod experiment of amateur arbitration in place of the skilled exactitude of compulsory justice, except that they hope to find a remedy quicker and more sure to end. We do not find complaints that clients generally find fault with the ordinary and fair expenses of litigation; it is rather the unknown engagement of time, effort and money which is undertaken in commencing a litigation, that deters men from the courts, and business from the profession.

In any attempt to discuss the facts, we ought to beware of the very common fallacy which compares reversals with affirmances, and censures either the court below for being so often wrong or the appellate court for profuse reversals. These statistics are generally based on the reported cases in a volume or two. They take no note of the far larger volume of business in which the courts proceed to judgment without appeal and even without opinion to be reported.

The facts are that out of the immense number of controversies settled by the courts, a small proportion present a question of sufficient doubt that the court writes an opinion thereon to make clear the ground of their decision. No opinion is needed where there is not a debatable question. These relatively few cases form the reported cases appearing in the reports. On all such cases there is room for difference of opinion. On many of them the unsuccessful counsel advise appeal. The stability and usefulness of the whole judicial system, and the public confidence in it depend on the freedom with which doubtful decisions, or even doubted decisions, can be reviewed, and the absolute freedom with which the appellate courts can correct error wherever found. Of course appellate courts are not infallible, but we must make them as nearly so as we can, and then insist that they shall reverse freely wherever their best judgment of the law is that injustice has been done.

There is no use in having an appellate court except as it reverses. If it always affirmed it might as well be abolished. To allow appeal from a court below which never erred would be to allow the lawyers to multiply costs and delay without service to the community. To allow an appeal to a court

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which feared to reverse too large a proportion of the cases would have the like effect.

If we had perfect courts of original jurisdiction we should have no erroneous decisions. It is the certainty of a proportion of erroneous decisions that renders appeal necessary. If we had a perfect bar they would never advise an appeal where the decision ought to be affirmed. Affirmances in a perfect appellate court would mark the cases where counsel wrongly advised an appeal.

Therefore, to measure our judicial system and its sources of delay by the proportion of reversals and affirmances, we should bear in mind that the (1) cases not appealed ought to far exceed the cases reversed on appeal; but (2) among cases appealed, reversals ought to be expected to exceed affirmances. And, to preserve their usefulness, no appellate court should entertain for a moment the idea that it can be bad policy to reverse too large a proportion of cases. It is bad policy to reverse any case on insufficient grounds, but it is equally bad policy to affirm any case that should be reversed were all others to be affirmed. Every case should be treated on its own merits, absolutely unencumbered by any idea that there are orcan be too many reversals. —*N. Y. Daily Register.*

In Forma Pauperis.

The meaning of this is "in the form (or character) of a poor person. The practice of suing in *forma pauperis* is of quite ancient origin and was regulated by statute. Under the statutes 11 Henry VII, C. 12, and 23d Henry VIII, C. 15, sec. 3, every poor person desirous of bringing an action who can swear that he has not property worth £5, except his wearing apparel and the subject matter of the intended action, is to be allowed to bring his action without payment of the court fees and is to have an attorney and counsel assigned to him, who act for him without payment. The mode of obtaining leave to sue as a poor person was by a petition addressed to the court, in which the action was pending or in which it is intended to be brought, for leave to prosecute as a poor person and to have counsel and attorneys assigned him.

The petition must state the nature of the suit brought or intended to be breught; and that the applicant was not worth £5, taking into account all the property, personal goods and effects which petitioner had, except the subject of the action and must be verified by his own affidavit and supported by a certificate of a counsellor of the court, that he has examined the claim and is of opinion that such person has a good cause of action.

The court, to which such petition was presented, if satisfied of the facts alleged, and that the applicant has a meritorious cause of action, would then by rule admit him to prosecute as a poor person and would assign to him counsel, attorneys and all other officers requisite for prosecuting his suit, whose duty was then to act without fee or reward. If the person so prosecuting was guilty of any improper conduct in the prosecution of his suit the court could and would in its discretion annul its order admitting him to prosecute as a poor person, upon which he would be deprived of all the privileges conferred by such order.

The practice as here stated, which prevailed in the time of Henry VII, and Henry VIII, is substantially the same now in this State as provided by statute.

"It was a rule of the Star Chamber that no man be admitted to sue *in forma pauperis* unless he brings a testimony of credit that he hath just cause to complain, otherwise the court will be filled with clamors and vexatious suits." Collectanea Juridica, p. 129.—*Chicago Legal Adviser.*

Distress for Rent.

We see from the case of Waring v. Slingluff (63 Md., 53) that they still have in Maryland, the common law abomination of distress for rent, though hedged about with some restraints which make it a more dangerous and difficult pastime for the landlord than in ancient times, when he could distrain anybody's cattle that happened to be in his tenant's field, whether they belonged to the tenant or to a stranger. Distress for rent is an infamous procedure, which came into vogue when England was run by landlords, when the tenant was but one grade above the villein, and had but few rights which the landlord was bound to respect. It was a kind of legal process by which a man acted as judge, jury and sheriff in his own case; tried the matter in controversy between himself and his tenant, rendering judgment in his own favor, and levying execution, either upon the tenant's or upon some one else's cattle, without giving the tenant any notice of the proceeding, except such as he might acquire by ocular demonstration, if he happened to be at home and saw the cattle driven off. It was a case in which the common law (let us not forget to call it the "wisdom of ages") allowed a man to be a judge in his own case, to render a judgment in his own favor, and to execute the judgment, without giving the other party any notice; and all this in the face of the solemn declaration of Magna Charta, that

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"no man shall be taken or imprisoned, or deprived of his freehold, his liberties or privileges, or exiled or outlawed, or *otherwise destroyed*, but by the judgment of his peers and the law of the land." This provision, we presume, exists in the constitution of Maryland, and the infamy of distress for rent exists in her law. It is said that large bodies move slowly. In American jurisprudence the rule is reversed: the smallest States stick longest to the old abominations. Maryland still has distress for rent; Deleware has the whipping post, and Rhode Island was the last American State to abolish imprisonment for debt.—*Central Law Journal.*

The Courts.

IN EQUITY.—New Suits.

August 15, 1885.

9576. Mary G. Smoot v. Benjamin S. Smoot. For divorce Com sol, H. R. Webb.

9577. Adolph A. Meaupou v. Mertenea Meaupou. For divorce. Com sol, H. W. Garnett.

August 17, 1885.

9578 John C. Collins v. Bridget Collins For divorce. Com sol. J, McD, Carrington.

August 20, 1885.

9579. John M. Young v. Arkansas G. Marks et al. Creditor's bill. Com sols, Edwards & Barnard.

August 21, 1885.

9580 William A. Skinkle v Allen B. Hayward. To restrain interference with drain. Com sol, F. Jannus.

9581. James O. P. Burnside, alleged lunatic. Petition of Helen W, Burnside to appoint committee. Com sol, J. C. Fay.

CIRCUIT COURT.—New Suits at Law.

August 15, 1885.

26341. James A, McNerhany v. W & G. R. R. Co. Damages $10 000. Piffs atty, J. A, Smith.

26342. James Crutchett v. The Wash. Gas Light. Co. Damages, $250,000. Piffs atty, same.

August 17, 1885.

26343. John C, Ray v. Annie A. Cole. Acct, $175. Piffs attys, Webb and Clarke.

26344. Andrew Jackson v. Charles A. Lemar. Acct, $170. Piffs atty, C. A. Walter.

August 20, 1885.

26345. James D. Mankin, adm'r, v, Thomas Pulman, jr. Notes. Piffs atty, J. N. Oliver.

August 21, 1885.

26346. Simon Goldstein v H. S. Brodie & Co. Notes, $10,676.93. Piffs atty, N. H. Miller.

26347. Hugh Murphy v. Edward Dorsey. Appeal. Piffs atty, J, G Bigelow.

PROBATE COURT.—Justice Merrick.

August 7, 1885

Estate of Charles King. Will proved and Elizabeth King granted letters of administration. Bond $1,500

Estate of Edward P Walsh Order of publication returnable September 4, 1885

Estate of Susan Viegle. Order of publication returnable September 4. 1885

Estate of Adam Kramer. Letters issued to Margaret Kramer. Bond $500.

Estate of James Read. First account passed.

Estate of Henry Isemann. Inventory of personal estate returned by Catharine Isemann. ex'x, $8,949.50.

Estate of Christopher Hager. Letters of administration issued to Wm. H. Kaiser. Bond $20,000.

Estate of Susan B. Porter. John W. Ross bonded and qualified as administrator.

Estate of John J. Gorman Michael B. Gorman bonded and qualified as administrator. Bond $1,000

Estate of Robert M. Reynolds. Letters testamentary granted to Orpha W. Reynolds. Bond $6,000.

Estate of George Smith. Letters granted to George C. Chipman Bond $500.

Estate of Hunter Brooke. Lorenzo A. Bailey bonded in $1,000 and qualified as administrator.

Estate of Casper Schafer. Catharine Schafer bonded as administratrix.

August 14, 1885.

Estate of Emma Hayward. Order of publication issued returnable September 11, 1885

Estate of Benjamin Alvord. Emily Louise Alvord bonded in $12,000, and qualified as executrix.

Estate of Seth L. Phelps. Sevellon A. Brown granted letters of administration. Bond $10,000.

Estate of John W. Elliott. Order of publication returnable September 4, 1885.

Estate of Joseph Reynolds Will proved by one witness.

Estate of Nathan Blum. David Blum appointed administrator. Bond $4,000.

August 21, 1885.

Estate of McGinnis Sands. Petition of C. W. Johnson for letters filed and order of publication.

In the matter of the guardianship of the grandchildren of Elizabeth Long. Marion Stewart appointed guardian of Marion P. and Jeannette S Stearns. $2000 bond.

Estate of Eleanor Miller. Horatio Browning and Charles Miller appointed administrators on bond $34,000.

Estate of Jeremiah D. Latham. Letters granted to T. J. Latham on bond of $20,000.

Estate of John Hughes. Will filed for probate.

Estate of Patrick J. Downing. Will admitted to probate.

Estate of N. Blum. Order to sell at private sale.

Estate of W J. McDollan. J. J. McDollan administrator.

Estate of Benedict Milburn. Letters granted to W. H. Henderson $10,000 bond.

Estate of Ellen J. King. Order directing payment to M. S. King.

Estate of Emma Hayward. Petition of J. A. Hayward filed

Estate of Ed. Curtis. Petition of E. H. Curtis for letters filed.

Estate of C. A. Kimmell. Motion for new bond of administraion overruled.

Legal Notices.

THIS IS TO GIVE NOTICE,

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testameneary on the personal estate of Mary Clemmer Hudson, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of August, 1885

34 EDMUND HUDSON.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. August 21st, 1885.

In the matter of the Estate of McGinnis Sands late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Cornelius W. Johnson, a credeitor, in behalf of Job Barnard.

All persons interested are hereby notified to appear in this court on Friday the 18th day of September next at 11 o'clock, a. m., to show cause why Letters of Administration to said Barnard on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WM. M. MERRICK Justice.

Test: 34 H. J. RAMSDELL, Register of Wills.

EDWARDS & BARNARD, Solicitors.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. August 21st, 1885.

In the matter of the Estate of John Hughes, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by James Hughes.

All persons interested are hereby notified to appear in this Court on Friday, the 11th day of Sept. next, at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WM. M. MERRICK, Justice.

Test: 34 H. J. RAMSDELL, Register of Wills.

J. E. McNALLY, Solicitor.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 21st day of August, 1885.

SUSAN HOPP v. HOLDEN et al. } No 9569. Equity.

Application for divorce on the ground of desertion

On motion of the plaintiff, by Mr. John A. Hayward, her solicitor, it is ordered that the defendants, Charles Holden, Nora Holden, Ida Holden, George Holden, Bertha Holden, and Irene Holden, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. WM. M. MERRICK, Justice.

A true copy. Test: 34 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of Seth Ledyard, Phelps, late of the District of Columbia, deceased

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of August next; they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 15th day of August, 1885

33 SEVELLON A. BROWN,

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Benjamin Alvord, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 14th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of August, 1885.

33 EMILY LOUISE ALVORD.

GEO E HAMILTON, Solicitor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William J, McCollam late of the District of Columbia, deceased

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 21st day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of August, 1885.

JNO. J. McCOLLAM,

A. A. BROOKE, Solicitor. *34 Administrator.

THIS IS TO GIVE NOTICE.

That the subscribers of the District of Columbia have obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Eleanor Miller, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscribers on or before the 21st day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 21st day of August, 1885.

CHARLES MILLER

34 HORATIO BROWNING

EDWARDS & BARNARD, Solicitors.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. August 21st, 1885.

In the case of Sarah E. Trammel, Administratrix of Virginia Johnson, dec'd, the Administratrix aforesaid has, with the approval of the court, appointed Friday, the 18th day of September, A. D. 1885; at 11 o'clock a. m, for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administratrix will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 34 H. J. RAMSDELL, Register of Wills.

CARUSI & MILLER, Solicitors.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business. August 14th, 1885.

In the matter of the Estate of Emma Hayward, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Matilda Florance.

All persons interested are hereby notified to appear in this court on Friday, the 11th day of September next at 11 o'clock, a. m., to show cause why the said Will should not be proved and admited to Probate and Letters Testamentary on the estate of said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WM. M. MERRICK, Justice.

Test: 33 H. J. RAMSDELL, Register of Wills.

LEON TOBRINER, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. August 14th. 1885

In the matter of the Estate of John W. Elliott, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Mary Elliott.

All persons interested are hereby notified to appear in this court on Friday, the 4th day of Sept. next at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WM. M. MERRICK, Justice.

Test; 33 H. J. RAMSDELL Register of Wills.

E W. GRANT, Solicitor.

THIS IS TO GIVE NOTICE

That the subscriber of Washington, D. C, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Nathan Blum, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of August, 1885.

DAVID BLUM,

LEON TOBRINER, Solicitor. 33 Administrator.

THIS IS TO GIVE NOTICE.

That the subscriber, of Washington City, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Adam Kramer, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of August, 1885

33 MARGARETH KRAMER, Executrix.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 18th day of August, 1885.

MARY G. SMOOT v. BENJAMIN S. SMOOT. } No 9576. Equity.

On motion of the plaintiff, by Mr. H. Randall Webb, her solicitor, it is ordered that the defendant, Benjamin S. Smoot, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.

A true copy. Test: 34 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of Washington, D. C., has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Elizabeth S. Carter, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of August next; they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 14th day of August, 1885.

34 CHARLES E. CARTER,

J. W. DOUGLASS, Solicitor. Executor.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 22d day of July, 1885.

JOHN H. KETCHAM v. JAMES W. PATTERSON. } No. 9541. Eq. Doc. 25.

Bill to quiet title.

On motion of the plaintiff, by Messrs. Birney & Birney his solicitors, it is ordered that the defendant, James W Patterson, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 30 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Thomas T. Scarff, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of July, 1885.

ANGELINA SCARFF,
ABERT & WARNER, Solicitors. 31 Executrix.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Howard Johnson, late of the District of Columbia, deceased.

All persons having claims again the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 30th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of July, 1885.

31 HENRY A. JOHNSON
ABERT & WARNER, Solicitors Administrator.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business. Letters Testamentary on the personal estate of Samuel F. Conover, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 28th day of July, 1886 next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of July, 1885.

31 SAM'L V. NILES,

THIS IS TO GIVE NOTICE:

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Charles Clark, late of the District of Columbia, deceased

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of July next: they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of July, 1885.

JOHN J. WILMARTH.
31 Administrator.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of James Torphy, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 22d day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of June, 1885.

BENJAMIN F. RITTENHOUSE,
GORDON & GORDON, Solicitors. 31 Administrator c. t. a.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 31st day of July, 1885.

ANDREW J. AVERY v. JULIA A. JOHNSON ET AL } No. 9556.

On motion of the plaintiff, by Mr. Irving Williamson, his solicitor, it is ordered that the defendants Julia A. Johnson and William Johnson, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
True copy. Test: 31 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John Wunderlich, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 31st day of July, 1885.

JOANNA TURNER.
JUDSON T. CULL, Solicitor. 31 Admisistratrix.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

JOHN H. KING et al. v. WILLIAM WATSON et al. } Eq 9441. Docket 24.

Jesse H. Wilson and George W. King, trustees herein, having reported the following sales, to wit:

To John F. Dyer, lot 12 in square 15, Washington, D. C., for $4,724.84.

To James Manogue, parts of lots 8 and 9, in the "Slip," in Georgetown, D. C., for $3,125.00.

To Jesse V. N. Huyck, part of a tract of land called "White Haven," in Washington County, for $1,141.26.

Being all the property in this cause decreed to be sold, and in the aggregate amounting to the sum of $8,991.12.

And which sales and the property sold are more fully described in said trustees' report, and the proceedings herein.

It is, this 28th day of July, A. D. 1885, ordered by the Court, on motion of complainants' solicitor, that said sales be confirmed, unless cause to the contrary be shown on or before the 1st Tuesday of September, 1885.

Provided a copy of this order be published in the Washington Law Reporter, once a week for three consecutive weeks before said day.

A. B HAGNER.
A true copy 31 Test: R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

ELIZABETH M. GULICK v. MARY E GULICK et al. } 9454. Eq. Doc. 24

Upon consideration of the trustee's report of sales, it is by the Court, this 29th day of July, A. D. 1885, ordered, adjudged and decreed, that the sales so reported stand ratified unless sufficient cause to the contrary be shown to the Court on or before the 1st day of September next.

Provided a copy of this order be published once a week for three successive weeks prior to said last mentioned day.

The report shows amount of sales to be $23,286 42-100.

A. B. HAGNER.
A true Copy. Test: 31 R. J MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 31st, 1885.

In the matter of the Estate of John A. B. Leonard, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by Sallie Johns Peter.

All persons interested are hereby notified to appear in this court on Friday, the 4th day of Sept., next, at 12 o'clock, m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 31 H. J. RAMSDELL, Register of Wills.
H N. SOHON, Solicitor.

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Legal Notices.

THIS IS TO GIVE NOTICE.
That the subscribers, of the District of Columbia have obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Selina C. Pendleton, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscribers on or before the 7th day of August next; they may otherwise by law be excluded from all benefit of the said estate.
Given under our hands this 7th day of August, 1885.
ROSE B. DARRELL,
E. C. PENDLETON,
32 Executors

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration, on the personal estate of John J. Gorman, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 7th day of August next; they may otherwise by law be excluded from all benefit of the said estate,
Given under my hand this 7th day of August, 1885.
M. B. GORMAN,
32 Administrator.
NEAL T. MURRAY, Solicitor.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Adminstration on the personal estate of Susan B. Porter, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of August next; they may otherwise by law be excluded from all benefit of the said estate
Given under my hand this 7th day of August, 1885.
JOHN W. ROSS,
32 Administrator.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Caspar Schaefer, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of August next; they may otherwise by law be excluded from all benefit of the said estate
Given under my hand this 7th day of August, 1885.
CATHARINE SCHAEFER.
LOUIS SCHADE, Solicitor. 32 Executrix.

THIS IS TO GIVE NOTICE,
That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Henry Isemann, late of the District of Columbia deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of August next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 6th day of August, 1885
CATHARINE ISEMANN,
FERDINAND SCHMIDT, Solicitor. 32 Executrix.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 31st day of July, 1885.
JOHN A LOUDON
v. } No. 9378.
WM G. FLOOD ET AL.
On motion of the plaintiff, by Mr. C. Carrington, his solicitor, it is ordered that the defendants, William G. Flood, Samuel Mason and Harriet Ann Dorsey, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.
By the Court. A. B. HAGNER, Justice.
True copy. Test: 31 R. J. MEIGS, Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Holding a Special Term for Orphans' Court Business, August 7th, 1885.
In the matter of the Estate of E. P. Walsh alias Edward Walsh, late of Washington, D. C., deceased
Application for Letters of Administration on the estate of the said deceased has this day been made by H. J. Daly, a creditor of said deceased.
All persons interested are hereby notified to appear in this court on Friday, the 4th day of September next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. WM. M. MERRICK, Justice.
Test: 32 H. J RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, July 17, 1885.
In the matter of the Estate of Susan Viegle, late of the District of Columbia, deceased.
Application for Letters of Administration on the estate of the said deceased has this day been made by Susan Hopp.
All persons interested are hereby notified to appear in this court on September the 4th A D. 1885, next, at 11 o'clock, a m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. WM. M MERRICK, Justice.
Test: 32 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 7th day of August, 1885.
PAULINE SINK
v. } No. 9563. In Equity.
FREDERICK SINK.
On motion of the plaintiff, by Mr. Nehemiah H. Miller, her solicitor, is it ordered that the defendant, Frederick Sink, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.
By the Court. WM. M. MERRICK, Justice.
A true copy. Test: 32 R J. MEIGS. Clerk.

THIS IS TO GIVE NOTICE.
That the subscriber, of Greensboro, N. C., hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Hunter Brooke, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of August next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 7th day of August, 1885.
FERDINAND SCHMIDT. LORENZO A BAILEY
32 Solicitor. 511 7th St., N. W. Administrator.

THIS IS TO GIVE NOTICE.
That the subscribers, of Port Tobacco, Md., and Washington, D. C., have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration W. a on the personal estate of Mary C. McDonnell, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscribers on or before the 16th day of July next; they may otherwise by law be excluded from all benefit of the said estate
Given under our hands this 16th day of July, 1885
F. MARCELLUS COX.
30 GEORGE E. HAMILTON.
Administrators w. a.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 22d day of July, 1885.
JOHN STEWART
v. } No. 9538. Equity Docket. 25.
EUPHEMIA STEWART.
Application of divorce on the ground of desertion.
On motion of the plaintiff, by Mr. O. Storrs, his solicitor, it is ordered that the defendant, Euphenia Stewart, cause her appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.
By the Court. A. B. HAGNER, Justice.
True copy. Test: 30 R. J. MEIGS, Clerk.

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Washington Law Reporter

WASHINGTON - - - - - - - August 29, 1885.

GEORGE B. CORKHILL - - - EDITOR

Maryland's Oleomargarine Law.

The Maryland Court of Appeals have decided that the oleomargarine law of that State is void; but not on the same grounds on which the New York law was upset, by any means. The New York law was held to be void because it was unconstitutional. The Maryland law is held void on account of the manner in which the law itself is framed. The act makes it criminal to sell oleomargarine unless it is conspicuously branded as such. The legislature first imposed a fine for every infringement of the law, but subsequently added imprisonment as a fine alone was not considered severe enough. Here arises the difficulty in the law, as the court held that neither penalty can be enforced. The court say: "There is a plain inconsistency and repugnancy between the punishment prescribed by the second and third sections. By section 2 the offence is punished by a fine of $100, and by section 3 the same offence is punishable by imprisonment in the county jail. To this extent these two sections must be adjudged invalid, because it is impossible for the court to say under which of them the party is to be punished."

THE Belgian government will hold an international congress at Brussels in September, the object of which will be an elaboration of an international code of commercial law. This congress will deal with bills of exchange and maritime law, omitting contracts for transportation with which it was originally intended to deal in connection with the other two subjects. As our Government has not provided for delegates the New York Chamber of Commerce will send Mr. Charles A. Peabody, of New York, to represent this country with the sanction of the Government. Very beneficial results are expected to follow from the deliberations of this assembly.

THE New York Supreme Court has had before it the interesting question whether a man who is "civilly dead" in the eyes of the law is dead within the meaning of a will. A testator bequeathed certain property to his son, directing that on the latter's death the property should go to other legatees. The son was convicted of murder and sentenced to imprisonment for life. The statutory law of the State declares such a convict "shall hereafter be deemed civilly dead." The court, however, decided that the son is not dead enough for the purpose of the successive legatees, holding that the word "death" as used in wills is ordinarily intended to mean natural death.

The Last of the Vacation.

The vacations are drawing to a close. The cool term makes the last part the best part. The disposition of families and belles to abandon the summer resorts as soon as the heat ceases does not infect the lawyers, whose enjoyment of vacation is doubled when days grow cool attracting to the woods and wilds, and nights make sleep a new pleasure.

The proper measure of the length of a vacation is said to be the the time when one wants to be back at work again. But few of us get full measure.

Fortunately the return to the city need not be the end of the pleasures and advantages of vacation. For it is easy to slip out and take a day or two in the country, and make up for short measure by supplementary proceedings in the nature of vacation.

It ought to be some time before the pressure of business engrosses Saturdays.

Before long, however, the full current of business will be running, and the engagements will blacken the pages of the diaries; and the days will be too short, and the evenings too, for the contests and the preparation for contests which will occupy all minds.—*N. Y. Daily Register.*

THE Supreme Court of Wisconsin has lately held in Emerson v. Durand that, in the absence of an express contract, an agreement to pay compensation for services of a partner, rendered a firm, may be implied, a holding contrary to the course of authority.

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Supreme Court District of Columbia

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY

JOB BARNARD *vs.* LIFE INSURANCE COMPANY.

EQUITY. No. 8,032.

Decided May 11, 1885.
The CHIEF JUSTICE and Justices JAMES and MERRICK sitting.

1. A party in making an assignment has a right to prefer creditors.
2. In the District of Columbia stock in an incorporated company cannot be subjected to the process of attachment or of execution.

THE CASE is stated in the opinion.

H. O. CLAUGHTON and H. E. DAVIS for plaintiff.

ELLIOTT & ROBINSON for defendant.

Mr. Justice MERRICK delivered the opinion of the court.

This is a cross bill filed by the receiver of the German American National Bank, to subject certain stock which had been assigned to the plaintiff in the bill below to the lien of his judgment.

The plaintiff below was assignee of certain stock in the Life Insurance Company of the State of Virginia assigned to him for the purpose of compensating a lunatic for certain indebtment to him by the assignor who was his committee, the indebtment having been incurred many years ago and the assignor being at the time of the assignment unable to pay all his debts. The plaintiff, in the cross bill, sought to arrest the perfection of that assignment which the plaintiff in the original bill was seeking to obtain through the instrumentality of a court of equity upon the ground that, as receiver of the German Amercan National Bank, he was entitled to a lien upon the fund, which lien, as he supposed, had been wrought out by the levy of an attachment by way of execution upon his judgment prior to the assignment made to the plaintiff in the original bill.

It is well settled, independent of the provisions of the bankrupt and insolvent laws of the various States, and of the Federal Government when it had a bankrupt law, that a party has a right at common law and in common honesty to prefer one creditor over another. In this particular case there was every moral inducement on the part of the assignor to carry out in the acts that he did this legitimate right of preference, because he had wasted the assets of an imbecile which had been placed in his hands, and that of necessity therefore was one of the most sacred debts which could rest upon him morally and in honor too. And indeed, under the provisions of many of the insolvent and bankrupt laws, that sort of debt was regarded as so sacred that fiduciary obligations were exempted from the operation of such laws.

This being the equity of the case, therefore the plaintiff in the cross bill could have nothing to rely upon unless it were the obtension of a legal lien through the levy of his attachment by way of execution. But here again the laws of the District of Columbia come short of the provisions which obtain now in nearly all the States of the Union in not making any provision by means of which stock, in an incorporated company, can be subjected to the process of attachment or the process of execution. It is well settled at common law that that sort of property is of such a shadowy nature that the hand of the law cannot grasp it so as to give to any creditor any right against it which can be enforced through any judicial process.

The lien therefore, under these circumstances, having failed altogether, the plaintiff in the cross bill having no equity paramount, but, on the contrary, an equity subordinate to the equity of the plaintiff in the original bill, must fail in his application in the cross bill, and it will be dismissed with costs.

THE announcement of the marriage of Lord Coleridge was received with surprise by his transatlantic friends. No one would have suspected the Lord Chief Justice of having had matrimonial intentions at his age. But this is his affair, not ours, and we do not see why he should not arrange it to suit himself without exciting so much uncalled-for comment.

THE less a man thinks, the more he talks.

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Supreme Court Pennsylvania.

LANDIS *vs.* ROTH.

Statute of Limitations: Promise to pay debt barred must identify debt.

1. A promise to pay a debt barred by the Statute of Limitations will not operate to remove the bar of the statute unless the debt is so clearly identified and so distinctly acknowledged as to be beyond all doubt.
2. When the promise relied upon to take a case out of the statute fails to identify the particular debt in question, giving neither its date, amount, or the balance due thereon, it is insufficient.

Error to the Common Pleas of Montgomery county.

Assumpsit, by Peter Roth against Joseph Landis and Henry Landis upon a promissory note. Plea, *non-assumpsit infra sex annos.*

On the trial, before Boyer, P. J., the following facts appeared: The plaintiff sold Joseph Landis, one of the defendants, a farm, for the unpaid purchase money of which, he with his father Henry Landis, the other defendant, gave their note which is in suit. Joseph Landis paid the interest on the note up to April 1, 1872. Henry Landis paid nothing, and neither principal or interest was ever demanded from him for ten or twelve years after its execution. In 1876 or 1877 Joseph Landis made an assignment for the benefit of his creditors. A few days after the assignment plaintiff went to see Henry Landis, and he testified that he said to Henry Landis, "I came for money," to which Henry Landis replied "I will pay you $600 in thirty days on the note. . . . I will pay you the rest as quick as I can, but you must not be too hard on me." . . . "When he had said that, the old woman, I mean his wife, came to us and said, 'Roth, we will pay you every dollar, and if we have to pay it out of our pocket.' When Henry heard this he said, 'Yes, we will pay you.'" There was no evidence to show that the note in suit was the same one that Henry Landis promised to pay. This suit was commenced March 21, 1879.

The court charged the jury, *inter alia*, as follows: "The testimony in regard to what Henry Landis promised dates in 1877. It was then that Peter Roth testified he called upon Henry Landis at his house at the instance, he says of Joseph Landis, to inquire for his money. ['When I got to Henry Landis,' Peter Roth says, 'I said, I came for money, and he said, I will pay you $600 in thirty days on the note, this note. He said, I will pay you the rest as quick as I can, but you must not be too hard on me.'] If that were all it would be very doubtful whether that would be a sufficient promise upon which to base a recovery in this case by the removal of the Statute of Limitations, because the promise is not absolutely to pay the whole debt immediately, or except under certain terms. But afterwards in the same conversation Peter Roth swears that the old lady, who was present, [Mrs. Henry Landis, spoke up and said, 'Roth, we will pay you every dollar, and if we have to pay it out of our pockets.' Henry said, 'Yes, we will pay you.' If it be true that this was all said then the latter part of these expressions is sufficient in the judgment of the court to enable the jury to find a positive promise."]

Verdict and judgment thereon for plaintiff, whereupon Henry Landis took this writ assigning for error *inter alia*, the above portions of the charge included in brackets.

PAXSON, J. The only question in this case is whether there was a sufficient acknowledgment of the debt to take it out of the Statute of Limitations. The testimony relied upon for that purpose was that of the plaintiff below. He said, "When I got to Henry Landis', I said 'I come for money,' and he said, 'I will pay you $600 in thirty days on the note (this note). I will pay you the rest as quick as I can, but you must not be too hard on me.' . . . The old lady, Mrs. Henry Landis, spoke up saying, 'Roth, we will pay you every dollar if we have to pay it out of our pockets.' Henry said, 'Yes, we will pay you.'"

The learned judge charged the jury that "if it be true that this was all said the latter part of these expressions is sufficient in the judgment of the court to enable the jury to find a positive promise." The jury so found.

This subject has been so frequently and elaborately discussed that we may be excused from going over the ground again at length. It is sufficient to indicate the rule as laid down by the authorities and then apply it to the facts of this case. In Miller v. Baschore (2 Norris, 356), it was said: "In order to effect such a result there must be a clear and definite acknowledgment of the debt, a specification of the amount due, or a reference to something by which such amount can be definitely and certainly ascertained and an unequivocal promise to pay." In the later case of Palmer v. Gillespie (14 Norris, 340), it was held that the promise to pay need not be express. It was said by Judge Mercur: "It is not essentially necessary that the promise be actual or express, provided that the other necessary facts are shown. A clear, distinct or unequivocal acknowledgment of the debt is sufficient to take a case out of the operation of the statute. It must be an admission cor-

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istent with a promise to pay. If so, the law will imply the promise without it having been actual or expressly made. There must not be uncertainty as to the particular debt to which the admission applies."

The meaning of which is that where the debt is identified beyond all doubt and distinctly acknowledged, the law will imply a promise to pay it but it is not a subject for a jury to guess at.

In the case in hand the debt was not sufficiently identified. In the conversation testified to by the plaintiff there is not a word as to the date of the note, its amount, or the balance due thereon. The note was not produced and there is no evidence that the plaintiff had it with him. There is no certainty as to what debt or what note was referred to. Any uncertainty, either in the acknowledgment or identification of the debt, is fatal. Burr v. Burr, 2 Casey, 284. In that case there was an actual payment on account but the court held the debt was identified. The evidence there was as follows: "Mother says, 'Can thee let me have a little interest money on that note which I hold of thine?' He said, 'How much would thee like, mother? She said, 'Four or five dollars,' and he gave her seven." There was no evidence of the existence of any other note between the parties. Yet it was held that the acknowledgment was insufficient. The present case is certainly no stronger, and as Burr v. Burr has been constantly followed to the present time we are constrained to reverse this judgment.

Judgment reversed and a *venire facias de novo* awarded.

Short Forms.

The ingenuity of some of the most ingenious members of the profession is busily engaged in devising short forms of conveyances to take the place, if possible, of the longer forms now in use. The object is a desirable one, and there is not the slightest doubt that it will in the course of time be attained. But if we understand the situation of affairs rightly, the greatest obstacle to a desirable abridgment of prolix forms is the inconsiderateness of those whom we may call the idealists who would reduce everything to a minimum.

We may illustrate the case by supposing that a mechanic, annoyed at the expense and heaviness of a clumsy scaffold, with far more timber in it than necessary, and with cables instead of ropes, should undertake to substitute the very slightest possible boards and cords that would sustain the weight. If they sent him a rope which had three strands, and if he was of opinion after careful experiment that one strand would be enough to sustain the weight of his painter and the paint pot, his proposal to cut the other two strands, merely as a sort of protest against superfluity, would be no more foolish than the aim of some so called reformers to adopt as proper and safe for practical purposes, instruments no longer and no fuller than absolutely necessary to give legal effect.

An English barrister who writes his name "H. Tyrwhitt Frend," and whose ideas of practical conveyancing must be about as unusual as his cognomen, has prepared a set of short forms for conveyancing which he has reduced to a very small compass. The views he proceeds upon are such as these: the parties sign their names, therefore it is unnecessary to have a repetition of the names in the body of the instrument; the habendum cannot control the granting clause, therefore it is useless and to be omitted. The whole deed is dealt with on this method.

The proposal of such meagre absurdities mixes into the desired reform an air of sentimental futility that cannot but seriously hinder the progress of improvement. A very little reflection would satisfy even a man who had not been satisfied by experience that many things are desirable and convenient which are not absolutely necessary. If we were left to discover the true names of the parties from the signatures, which the parties make at the foot of the deed, more than half of our titles would be absolutely unsearchable.

The legal effect of the deed is not altered, but the convenience of the profession and the safety of the owner is very seriously impaired by depriving him of the convenience of a clear and legible engrossment of the names, although it is a repitition.

Every clause has its analogue to this. The habendum in nine cases out of ten, or, perhaps, ninety-nine out of a hundred, in this State and in many of the States, adds nothing to it, and takes nothing from the legal effect of an ordinary conveyance; but in the one hundredth case where, perhaps, mention of a consideration is omitted, or where, perhaps, the deed embraces real property in a State, the law of which requires the mention of heirs in order to vest a fee, it may prove of vital importance.

The same ideal notion suggests that where the parties sign and a seal is affixed, the words "witness our hands and seals" are superfluous; but there are not a few litigated cases in which the ability of a party to secure the effect of his deed when there was some alteration or mutilation, or the copy from the

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record failed to show the seal, has depended upon this which, in other cases, is a useless repetition.

We should as soon think of allowing a reformer of harness to pare down the traces and breaching to the slenderest form which, in his judgment, was sufficient for our load as to take title under a deed pruned of everything which is not necessary to the immediate legal effect of the instrument.

A deed is not only a present act; it is a repository of evidence; and sooner or later it becomes the sole repository of all the evidence there is in reference to that act; and that which is sufficient to shut the grantor's mouth to-day may be a very poor reliance against the grantor's children or creditors a long time hence.

The short deed of the future, therefore, will not omit any legal safeguard. Its reform will consist in the more concise and therefore more accurate expression of every existing safeguard. To bring professional opinion generally up to a consent to the adoption of the necessary abridgment it will be necessary to discard the notions that theoretic immediate sufficiency is all that is desired.

The instincts of the public on this point are sound; and clients generally would rather have the usual deed than what is known as Chancellor Kent's form, which may be written on a visiting card. The chancellor never proposed it for practical use, but merely as an illustration to his class of the bare essentials of a present transfer.—*N. Y. Daily Register.*

Handwriting.

The *Solicitors' Journal* in an article on Handwriting as Evidence of Identity, combats Lord Chief Justice Cockburn's opinion advanced in the Tichborne case, that handwriting is the one unchanging characteristic of a man. The *Journal* says: "It appears to us that it entertained at all it ought to be entertained only subject to some important qualifications. There is a period in the life of most people during which the handwriting is unformed, and for the purpose of comparison, writing during this period should be excluded. We are constrained to say, as the result of some observation, that in some men this period lasts very long. There is a certain member of her majesty's privy council, who, although he must have covered reams of paper during the course of a busy life, never seems to have thought it necessary to acquire any formed style of handwriting. Being a person of strong will, it is quite conceivable that he may, even yet, some day resolve to write a decent and uniform hand, and if he makes that resolution he will unquestionably carry it out. But in that case what would become of the evidence of identity afforded by his handwriting? Suppose the late Dean of Westminster had devoted himself for a week to forming a hand which could be read, does any one doubt that he would have succeeded in his purpose, and that his style of (so-called) handwriting would have wholly changed? Again, it is obvious that physical changes in the hand or arm may occasion the adoption of a different handwriting. Disuse for a lengthened period of the habit of writing may conceivably lead to forgetfulness of the mode in which letters were formerly framed. Letters written in haste are apt to differconsiderably from letters written with deliberation, and letters written with a fine pointed pen are often singularly unlike letters written with a quill pen. And again, peculiarities in handwriting are apt to be dropped There was a curious instance of this in the letters of the genuine Roger Tichborne. From a very early period he had adopted the habit of placing a dot over the letter "y" whenever it occurred at the end of a word, but in his letters after the year 1851 this peculiarity was entirely absent. For some reason or other he had abandoned the habit. This is, of course, an extreme instance of eccentricity, but there few people without some peculiar habit in writing. We know, for instance, a learned and very distinguished queen's counsel, the chief characteristic of whose handwriting is the habit of crossing his 't's' over instead of through the vertical stroke. We know an eminent solicitor whose peculiarity is the horizontal tail which he adds to certain letters occurring at the end of words. But it is quite possible that these persons may drop these habits. Perhaps they may do so if they read these remarks. The general results at which we arrive are, first, that no reliance can be placed on what we may call tricks of handwriting, or even on the formation of particular letters. The general character of a man's handwriting may afford such evidence; but even as to this, caution is requisite to ascertain that the handwritings compared were written at or about the same date. We doubt whether it is safe to assume that any man will, throughout the whole of his life, retain, even the same general character of handwriting. And lastly, it may be questioned whether Lord Chief Justice Cockburn was right in his assertion that 'there is nothing in which men differ more than in handwriting.' We should be rather disposed to think that very many persons write alike." We have a correspondent, an illiterate person, who al-

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ways dots his capital i's. We have known persons on particular occasions unconsciously to imitate another's signature, as in drawing up a check payable to the other's order. Young men brought up in a mercantile establishment are quite apt to form their handwriting on that of a book-keeper or some member of the firm. And the same man does not write alike at all times during the same general period. Much depends on pen, paper, ink, and the state of his nerves. We have seen our own signature on a hotel register, which we should be quite ready to deny if we had forgotten the occasion. We agree with the *Solicitor's Journal* on this subject, and further, we believe that handwrining is no index whatever to the character.—*Albany Law Journal.*

Illegitimacy.

The decision at which Mr. Justice Kay felt himself compelled to arrive in the case of Re Westhead is a *reductio ad absurdum* of the supposed rule of law that a child born in wedlock is necessarily the child of the husband if there is possibility of access. At one time it was, we believe, considered an absolute rule that the child was legitimate if the husband was alive within the period of gestation It was considered a relaxation of the rule to admit the illegitimacy of the child if the husband was *extra quatuor maria.* Then came the rule that if there was no possibility of access from any cause the child was illegitimate. Mr. Justice Kay came to the conclusion that there was possibility of access, because more than a year before the child was born the husband passed his wife in the passage of a hotel, although there was no other evidence of their having been together. Mr. Justice Kay was no doubt right, assuming the rule as he supposed; but Lord Esher was fortunately able to lay down that no such rule exists. There is a presumption in favor of legitimacy arising from the fact of marriage; but where there has been a decree *nisi* for a divorce, the husband and wife live apart, and the child is registered in the name of the adulterer, there is ample evidence rebutting the presumption.

The decision of another point of law in regard to proof of illegitimacy, in the case of Pearson v. The Attorney-General, gives the Crown a windfall of about £200,000. George Perton died in 1881 intestate as to the great bulk of his personal property, which was claimed by Mrs. Whittaker, sole surviving granddaughter of Mr. and Mrs. Clapperton, who were said to be the mother and father of the deceased. Mr. Perton was born in 1801, and was baptized as the child of Clapperton and his wife. The register of baptism would probably not be evidence of itself of paternity, and the claimant was unable to show that Clapperton was alive within some years of Perton's birth. The case for the claimant was, therefore unsatisfactory; but on the case for the Crown arose the logical puzzle which has often perplexed lawyers. Perton had on several occasions stated himself to be illegitimate, and the question was whether this statement was admissible in evidence. The rule is that in cases of pedigree the statement of a deceased member of the family is receivable. But Perton's statement was that he was not a member of the family. Was it in that case receivable? Mr. Justice Chitty seems to have relied on an idea that the statement was receivable as being against interest but that interest must be pecuniary interest, which was not in question in this instance. He gives, however, a more ingenious reason for admitting the evidence—namely, that, assuming Perton to be illegitimate, he was a family in himself. Whether this view holds good will doubtless be submitted to the Court of Appeal.—*London Law Journal*

Some Instances of Mistaken Identity.

About the middle of the last century a certain Mr. Killet was convicted and executed on the positive oath of a man named Jackson, who swore he had been robbed, Killet's innocence being afterward proved. Another tragical case was that of two men, named Mackley and Clinch, who were executed for the murder of a Mr. Fryer in Islington in 1797, their identity being positively sworn to by Miss Annie Fryer, the cousin of the murdered man, who was with him at the time Yet years afterwards two criminals severally confessed to the crime for which Mackley and Clinch had innocently suffered. Another unfortunate man named Coleman was executed in 1749 for the murder of a girl, Sarah Green, who swore positively to him as one of her assailants, the real criminals being discovered through one of them turning king's evidence as it was called in those days. Turning from these tragedies to cases wherein the accused persons escaped, we shall find equally remarkable instances of resemblance between different persons. A certain Mr. Frank Douglas a man of fashion in the last century, was arrested on a charge of highway robbery, much to the horror of his friends, and would certainly have been hung but for the following providential circumstance. A notorious criminal named Page, happened to be caught and brought to Newgate at the same time, and when the victim of the robbery saw *him* he

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recognized his real assailant, the extraordinary resemblance between the two men amply explaining his further testimony. A similar case occured in New York some forty years ago or thereabouts, which created much excitement in that city. A hotel-keeper was charged with presenting a forged check, and the bank-clerk swearing to his identity, he was convicted. A new trial was, however, obtained, and after the unfortunate man's business and reputation were gone, a notorious forger happened to be arrested, who turned out to be the real criminal, a remarkable resemblance between the two being once more the cause of much misery to an innocent man.

Good Reputation.

In a trial recently in Philadelphia, Judge Biddle made some sensible remarks in sentencing a prisoner who had been convicted of embezzlement, and for whom leniency was sought on the ground that he had previously borne a good reputation and held a high social position. The judge expressed the opinion that it was not sound doctrine to hold that "because a man has had a good reputation, and has been surrounded by every advantage that education and association can give, when he commits a crime all these circumstances should be taken in mitigation of punishment." He had great sympathy, he said, with a poor, ignorant man "who steals a ham to supply the wants of his family, or steals shoes to put upon his children's feet," but, he asked, "why should sympathy be shown him who trades upon his good reputation to enable him to defraud the people?" Judge Biddle's remarks go to the root of a morbid and mischievous sentiment which has done much to demoralize public opinion. There is no reason why a criminal who has respectable antecedents should be let off lightly on that account. There is more reason why the punishment in his case should be greater than a poor, ignorant man who steals to feed or clothe his children. When the man who has advantages of social relations and business connections has used all these to spread ruin and suffering broadcast, and has played the hypocrite, and went to church or taught in the Sunday school, and dressed well, or lived decorously, he should not be allowed to balance his hypocrisy against his crime, nor dealt leniently with because he succeeded in masking his scoundrelism so cleverly, but he should be dealt with in such a way as to hold out a wholesome warning to the weak in principle. It cannot be made too conspicuous, that when educated, intelligent men betray their trusts and enter on careers of fraud and deception, they are not only not entitled to special sympathy because of their antecedents, but those antecedents aggravate their guilt ten fold. He who, having all necessaries and many luxuries, and possessing no possible excuse in the presence of any dire need, deliberately enters upon a course of embezzlement, concealing his thefts by forgery and misrepresentation as he proceeds, and maintaining an external appearance of morality while committing daily the basest of crimes, puts himself out of the pale of rational sympathy, and ought, if justice were administered upon an intelligent system, to be punished far more severely than the poor wretch whose misery and privations and the sufferings of his dear ones drove him to break the law. For these canting scoundrels who seek to blind their fellow men with travesties of religious profession, while they are playing the part of sneak thieves, there can be no safe mercy, and not until both the public and the courts realize and act upon this will the temptatiens which in these days so easily overcome people in fiduciary positions be resisted successfully. Unpunished or insufficiently punished crime only invites further trespass in the same direction.—*Kansas Law Journal.*

The Two Shelleys.

Some years ago Ben. Butler had in his office a young man, who, nominally, was studying law, but who really gave more attention to the writings and biographies of the English poets than to law. When the day of his examination arrived he went to the office of the Judge to be questioned.

He came back shortly after in rather a dazed condition, and told Mr. Butler that the Judge had been pleasant enough at first, but suddenly became very angry, and ordered him out of his office, although the young man was not conscious of having done or said anything improper.

Mr. Butler called on the Judge to discover the cause of the trouble. "I asked your friend," said his Honor, "what was the rule in Shelley's case, and he replied very impudently, 'that a Court of Chancery would not appoint a father, who was an atheist, guardian of his own children.'"

Mr. Butler then explained to the irritated old Judge, that he and the student were talking of different Shelleys; the student referring to the celebrated decree of Lord Eldon in the suit brought by the poet Shelley to be awarded the guardianship of his children by his first wife, which was decieed against him

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on the ground of the atheistical and immoral sentiments expressed in his writings.

As a supplement to this we will mention the traditional answer of the student to Professor Dwight, that the rule in Shelley's was "the same as the rule in any other man's case, sir; the law is no respecter of persons."

Contracts of Minors.

In Reg. v. Macdonald, Q. B. Div., May 9, 1885, 52 L. T. Rep. (N. S.) 583, a minor hired furniture on the "hire and purchase" system, under a contract by which he undertook to pay for the furniture in quarterly instalments. After having paid four of such instalments, previously to the fifth instalment becoming due, he removed and sold the furniture without the knowledge and consent of the person from whom it was hired. *Held*, that he was guilty of larceny as a bailee under the statute. Lord Coleridge, C. J., said: "I am of opinion that this conviction must be affirmed. The prisoner was indicted for larceny as a bailee. I am not sure that the whole argument has not been upon an irrelevant point, for it is doubtful whether the words 'as bailee' are rendered necessary by the act, section 3 of which enacts that 'whosoever being a bailee of any chattel, money or valuable security, shall fraudulently take or convert the same to his own use, or the use of any person other than the owner thereof, although he shall not break bulk or otherwise determine the bailment, shall be guilty of larceny, and may be convicted thereof upon an indictment for larceny.' I will assume, however, that the words 'as bailee' are material, and that being so, it is said on behalf of the prisoner that he cannot be convicted under such an indictment because he obtained the goods, in respect of which he was indicted, on a contract which is void; that since by reason of his infancy, he could not enter into a contract, he could not be guilty of larceny as a bailee. Now, a contract certainly does arise out of a bailment; but on the other hand, a bailment is 'a delivery of goods in trust upon a contract, express or implied, that the trust shall be duly executed, and the goods restored by the bailee as soon as the purpose of the bailment shall be answered.' 2 Kent Com., 559. Bailment is then completed by delivery; it is a delivery of goods in trust. Here the goods were delivered under circumstances which created a special property in them, and while that special property existed the prisoner, if he abused that special property, is guilty of larceny under the statute. The act was passed to provide against this kind of crime. In my opinion the prisoner, though a minor, has been guilty of this offence because he had a property under the bailment separate from any contract." Cave, J., said: "I am also of opinion that this conviction must be supported. Bailment is a delivery of goods upon a condition, and though in the case of an infant a contract cannot be implied, the delivery upon condition nevertheless exists. In my opinion the delivery on condition creates a property in the goods as against the world until the condition is fulfilled, and the infant can maintain an action even if the real owner of the goods disturbs him in the possession of that property. The law recognizes a special property such as that created by the delivery of the furniture in the present case, and in my opinion the prisoner is a bailee, and though he cannot be held liable in an action of contract, he is within the mischief of the act, and the conviction was therefore, in my opinion, right." On reargument before thirteen judges the same conclusion was reached by a majority.—*Albany Law Journal.*

Substantial Justice.

One of the most pernicious practices of modern times is that of disregarding the plain letter of the law, and seeking justification in the declaration that "substantial justice" has been done. The profession generally will echo the sentiments of Mr. Stuart Beattie respecting the theory of "substantial justice." He is reported in the *Legal Adviser* for July 1st as having said: "What is this thing gentlemen call substantial justice? Where is it found? Who can tell when they have found it? Chitty tells us of no way to put it in issue. Neither Starkie nor Greenleaf tell what evidence supports or establishes it. We find the opinion of some court of recent date declaring a proposition as law which startles the legal mind and violates some well established principle; we seldom look in vain to find the court closing its opinion with the excuse that 'substantial justice has been done.' The first case I have found where the thing was used as an excuse for evading the law was when Pilate said, 'I find no offence in him,' and washed his hands in the presence of the multitude, but delivered the Son of God up to substantial justice. Let us have the law enforced, from the broadest guaranty of the law written to the remotest principle of the law unwritten. This is the only path to safety. This low lived bastard 'substantial justice' is to the pettifogger of the nineteenth century what her harlot mother 'public necessity' was to the tyrants of the eighteenth, and her bruted father, 'the end justifies the means,'

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was to the Jesuits before. The parents could not live where liberty lived, and liberty strangled them both. The offspring cannot live and the law live. Let us have justice according to law—something all men can agree upon. Substantial justice means justice according to the caprice of the hour—something which no two men can agree upon. Let us look at our law—read it, digest it, understand it, and then say with Justice Story, '*thus is the law written to follow and obey.*' Thus we will find the only justice that has substance, and innocent and guilty men alike judged by this rule will seldom fail of their deserts."—*American Law Journal.*

Judicial Innovations.

It is considered a well settled law that, in the absence of an express contract, a partner is not entitled to compensation for his services; but the Supreme Court of Wisconsin has lately decided, in the case of Emerson v. Durand, that an agreement to pay such compensation may be implied under the circumstances of the case. We had occasion, in our March number, to refer to this court as departing from the beaten paths of the law in its decision in the case of Yorten v. Railway Company, and we now have another illustration of the same character, which we regret to observe, as the Wisconsin court is one of great respectability. We are glad, however, to note the vigorous dissent of Judge Orton in the later case. The court seems to be moved by that dangerous sentiment which Kent long ago rendered axiomatic in the phrase that "hard cases make shipwreck of the law," and endeavor to reconcile its erratic decisions by claiming that the circumstances of the cases in question take them out of the rule of established precedents, when it is plain that the circumstances differ only in their physical aspects, but not in legal character or effect.—*American Law Record.*

In Custody.

In many of the old forms of declarations which can be found in Chitty, Sellon, Archibald, Tidd, Saunders, or any other writer upon the common law practice, it is recited that the plaintiff brings his suit against C D, "who is in custody," etc. This expression is not generally understood by our lawyers of the present day, and it may be of interest to recall its meaning.

Crabbe, in his History of the Common Law, says that: "In the seventh year of Henry VI, it was held: where a man was out on bail, that a bill could not be filed against him as in custody; and unless some proof were on record of his being in custody, it lay at his option whether he would plead to the bill. But notwithstanding this and similar decisions in the course of that reign, the court, in the thirty-first year of that king, decided that if it appeared that the defendant was out on bail, it should be deemed sufficient. In consequence of this decision, it became the practice to suppose the defendant in custody to file a bill, called afterwards a bill of Middlesex or a latitat, and then, by a copy of the bill, to arrest the defendant, who gave bail to appear, after which he was deemed liable to plead to a declaration in any action. The cause of this change is ascribed on the part of King's Bench to enlarge its jurisdiction, which was the evident effect of this course of proceeding, as it was thereby enabled to entertain suits of every kind. The court of King's Bench, the sovereign court of original jurisdiction in criminal cases, was probably intended at first to have cognizance only of pleas of the crown, excedting in cases where the officers of this court were privileged, by reason of their attendance, to sue or be sued there in pleas of trespass or debt, or where persons were already under the custody of that court and were to be charged with another suit. This last circumstance afforded an opportunity for this court, by a fiction, in order to warrant its proceedings in civil suits to suppose every really unprivileged person to be already in the custody of the marshal. In this manner it succeeded in bringing every suitor within its jurisdiction." Crabbe, p. 417.—*Legal Adviser.*

1. *Contract: Options in Produce.*—A promissory note given for margins in transactions in produce, where no delivery was intended, but mere payment of differences, as the market fluctuated, contemplated, is void.

2. *Evidence: Wager; Intention of Defendant.*—A party to such wagering contract may testify as to his intention in entering into it. in order to show its gambling nature. [First Nat. Bank of Lyons v. Oskaloosa Packing Co., S. C. Iowa, April, 1885.]

Judicial Sale: Fraud; Eviction: Recovery.—A person who buys property adjudicated to a succession representative at a judicial or forced sale of the same, upon an agreement between them that he will not bid against such representative, and whose purchase is subsequently annulled, is a purchaser with knowledge of the danger of eviction, and he cannot therefore, after eviction, recover the price paid by him. [Meyer v. Farmer, S. C. La., 1884.]

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The Courts.

IN EQUITY.—New Suits.

August 24, 1885.

9582. The Central National Bank, of Washington, D. C., v. Wm. McIntire et al Creditor's bill. Com sols, Edwards & Barnard.

August 25, 1885.

9583. John T. Ford v. Harry Allen et al. Injunction. Com sol, Alfred J. Carr.

August 27, 1885.

9584 Lizzie J. Kelly v John L. Kelly. For divorce. Com sol, L. Tobriner.

CIRCUIT COURT.—New Suits at Law

August 21, 1885.

26347. Hugh Murphy v. Edward Deviney. Appeal. Piff's atty. J. G. Bigelow.

August 24, 1885

26348. White, Hentz & Co. v. Patrick Curtain et al. Acct, $100.38. Piff's atty. E. H. Thomas.

August 27, 1885.

26349. Henry D. Cooke et al. v. Clarence Corson. Notes, and acct. $3,132.58. Piff's atty, F. H. Mackey.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 28th day of August, 1885.

LIZZIE J. KELLY v. JOHN L. KELLY } No. 9584. Eq.

On motion of the plaintiff, by Mr. Leon Tobriner, her solicitor., it is ordered that the defendant, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. WM. M. MERRICK, Justice.
True copy. Test: 35 R. J. MEIGS, Clerk

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John F. Tucker, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 31st day of July, 1885.

MARY JANIFER DOOLEY,
C. A. WALTER, Solicitor. 35 Administratrix

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. August 28th 1885

In the matter of the Estate of William Cahill, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament of the said deceased has this day been made by Catharine Dentz, executrix.

All persons interested are hereby notified to appear in this court on Friday, the 2d day of October next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WM M. MERRICK, Justice.
Test: 35 H. J. RAMSDELL, Register of Wills.
BAINBRIDGE H. WEBB, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. August 28th, 1885.

In the matter of the Estate of Henrietta P. Plant, late of the City of Washington, D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration c. t. a. on the Estate of the said deceased has this day been made by George H. Plant.

All persons interested are hereby notified to appear in this court on Friday the 18th day of September next at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration c. t. a. on the estate of the said deceased should not issue as prayed. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WM. M. MERRICK, Justice.
Test: 35 H. J. RAMSDELL, Register of Wills
CHAPIN BROWN, Solicitor.

Legal Notices.

THIS IS TO GIVE NOTICE:

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Jeremiah D. Latham, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 29th day of August next: they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of August, 1885.

T. J. LATHAM
35 Administrator.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Robert M. Reynolds, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 29th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of August, 1885.

35 ORPHA W. REYNOLDS.
FRANKLIN H. MACKEY, Solicitor

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Patrick J. Downing, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 21st day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of August, 1885.

E. M. GILLETT, Sol'r. 35 MARGARET J. DOWNING.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamenueary on the personal estate of Mary Clemmer Hudson, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of August next; they may otherwise by law be excluded rom all benefit of the said estate.

Given under my hand this 18th day of August, 1885

34 EDMUND HUDSON.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. August 21st, 1885.

In the matter of the Estate of McGinnis Sands late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Cornelius W. Johnson, a credeitor, in behalf of Job Barnard.

All persons interested are hereby notified to appear in this court on Friday the 18th day of September next at 11 o'clock, a. m., to show cause why Letters of Administration to said Barnard on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WM. M. MERRICK Justice.
Test: 34 H. J. RAMSDELL, Register of Wills.
EDWARDS & BARNARD, Solicitors.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. August 21st, 1885.

In the matter of the Estate of John Hughes, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by James Hughes.

All persons interested are hereby notified to appear in this Court on Friday, the 11th day of Sept. next, at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court WM. M. MERRICK, Justice
Test: 34 H. J. RAMSDELL, Register of Wills.
J. E. MCNALLY, Solicitor.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 21st day of August, 1885.

SUSAN HOPP v. HOLDEN et al. } No. 9569. Equity.

On motion of the plaintiff, by Mr. John A. Hayward, her solicitor, it is ordered that the defendants, Charles Holden, Nora Holden, Ida Holden, George Holden, Bertha Holden, and Irene Holden, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. WM. M. MERRICK, Justice.
A true copy Test: 34 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of Washington, D. C., has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Elizabeth S. Carter, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of August next; they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 14th day of August, 1885.

34 CHARLES E. CARTER,
J. W. DOUGLASS, Solicitor. Executor.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Benjamin Alvord, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 14th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of August, 1885.

33 EMILY LOUISE ALVORD.
GEO E HAMILTON, Solicitor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William J, McCollam late of the District of Columbia, deceased

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 21st day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of August, 1885.

JNO. J. McCOLLAM,
A. A. BROOKE, Solicitor. *34 Administrator

THIS IS TO GIVE NOTICE.

That the subscribers of the District of Columbia have obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Eleanor Miller, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscribers on or before the 21st day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 21st day of August, 1885.

CHARLES MILLER
34 HORATIO BROWNING.
EDWARDS & BARNARD, Solicitors.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business. August 14th, 1885.

In the matter of the Estate of Emma Hayward, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Matilda Florance.

All persons interested are hereby notified to appear in this court on Friday, the 11th day of September next at 11 o'clock, a. m., to show cause why the said Will should not be proved and admited to Probate and Letters Testamentary on the estate of said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WM. M. MERRICK, Justice.
Test: 33 H. J. RAMSDELL, Register of Wills.
LEON TOBRINER, Solicitor.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. August 21st, 1885.

In the case of Sarah E. Trammel, Administratrix of Virginia Johnson, dec'd, the Administratrix aforesaid has, with the approval of the court, appointed Friday, the 18th day of September, A. D. 1885, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administratrix will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 34 H. J. RAMSDELL, Register of Wills.
CARUSI & MILLER, Solicitors.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. August 14th. 1885

In the matter of the Estate of Jehu W. Elliott, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Mary Elliott.

All persons interested are hereby notified to appear in this court on Friday, the 4th day of Sept. next at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WM. M. MERRICK, Justice.
Test; 33 H. J. RAMSDELL Register of Wills.
E W. GRANT, Solicitor.

THIS IS TO GIVE NOTICE.

That the subscriber of Washington, D. C., hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Nathan Blum, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of August, 1885.

DAVID BLUM,
LEON TOBRINER, Solicitor. 33 Administrator.

THIS IS TO GIVE NOTICE,

That the subscriber, of Washington City, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Adam Kramer, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of August, 1885

33 MARGARETH KRAMER, Executrix.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 18th day of August, 1885.

MARY G. SMOOT v BENJAMIN S. SMOOT. } No 9576. Equity.

Application for divorce on the ground of desertion

On motion of the plaintiff, by Mr. H. Randall Webb, her solicitor, it is ordered that the defendant, Benjamin S. Smoot, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 34 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of Seth Ledyard, Phelps, late of the District of Columbia, deceased

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of August, 1885.

33. SEVELLON A. BROWN,

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Legal Notices.

THIS IS TO GIVE NOTICE.
That the subscribers, of the District of Columbia have obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Selina C. Pendleton, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscribers on or before the 7th day of August next; they may otherwise by law be excluded from all benefit of the said estate.
Given under our hands this 7th day of August, 1885.
ROSE B. DARRELL,
E. C. PENDLETON.
32 Executors.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration, on the personal estate of John J. Gorman, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 7th day of August next; they may otherwise by law be excluded from all benefit of the said estate,
Given under my hand this 7th day of August, 1885.
M. B. GORMAN,
32 Administrator.
NEAL T. MURRAY, Solicitor.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Adminstration on the personal estate of Susan B. Porter, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of August next; they may otherwise by law be excluded from all benefit of the said estate
Given under my hand this 7th day of August, 1885.
JOHN W. ROSS,
32 Administrator.

THIS IS TO GIVE NOTICE,
That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Caspar Schaefer, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of August next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 7th day of August, 1885.
CATHARINE SCHAEFER.
LOUIS SCHADE, Solicitor. 32 Executrix.

THIS IS TO GIVE NOTICE,
That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Henry Isemann, late of the District of Columbia deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of August next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 6th day of August, 1885
CATHARINE ISEMANN,
FERDINAND SCHMIDT, Solicitor. 32 Executrix.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 31st day of July, 1885.
JOHN A. LOUDON
v. } No. 9378.
WM. G. FLOOD ET AL.
On motion of the plaintiff, by Mr. C. Carrington, his solicitor, it is ordered that the defendants, William G. Flood, Samuel Mason and Harriet Ann Dorsey, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.
By the Court. A. B. HAGNER, Justice.
True copy. Test: 31 R. J. MEIGS, Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Holding a Special Term for Orphans' Court Business, August 7th, 1885.
In the matter of the Estate of E. P. Walsh alias Edward Walsh, late of Washington, D. C., deceased
Application for Letters of Administration on the estate of the said deceased has this day been made by H. J. Daly, a creditor of said deceased.
All persons interested are hereby notified to appear in this court on Friday, the 4th day of September next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. WM. M. MERRICK, Justice.
Test: 32 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 17, 1885.
In the matter of the Estate of Susan Viegle, late of the District of Columbia, deceased.
Application for Letters of Administration on the estate of the said deceased has this day been made by Susan Hopp.
All persons interested are hereby notified to appear in this court on September the 4th A. D. 1885, next, at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. WM. M. MERRICK, Justice.
Test: 32 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 7th day of August, 1885
PAULINE SINK
v. } No. 9563. In Equity.
FREDERICK SINK.
On motion of the plaintiff, by Mr. Nehemiah H. Miller, her solicitor, is it ordered that the defendant, Frederick Sink, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.
By the Court. WM. M. MERRICK, Justice.
A true copy. Test: 32 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.
That the subscriber, of Greensboro, N. C., hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Hunter Brooke, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of August next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 7th day of August, 1885.
FERDINAND SCHMIDT. LORENZO A. BAILEY
32 Solicitor. 511 7th St., N. W. Administrator.

THIS IS TO GIVE NOTICE.
That the subscribers, of Port Tobacco, Md., and Washington, D. C. have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration W. a. on the personal estate of Mary C. McDonnell, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscribers on or before the 16th day of July next; they may otherwise by law be excluded from all benefit of the said estate
Given under our hands this 16th day of July, 1885
F. MARCELLUS COX,
30 GEORGE E. HAMILTON.
Administrators w. a.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 22d day of July, 1885.
JOHN STEWART
v. } No. 9538. Equity Docket. 25.
EUPHEMIA STEWART.
Application of divorce on the ground of desertion.
On motion of the plaintiff, by Mr. C. Storrs, his solicitor, it is ordered that the defendant, Euphenia Stewart, cause her appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.
By the Court. A. B. HAGNER, Justice.
True copy. Test: 30 R. J. MEIGS, Clerk.

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Legal Notices.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Frederick J. Seybolt, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of October next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 4th day of October, 1884.
LUCY J. SEYBOLT,
T. A LAMBERT, Solicitor. 35 Administratrix.

THIS IS TO GIVE NOTICE,
That the subscriber, of Washington D. C., hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Sarah C. Whitney, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of August next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 4th day of August, 1884
SARAH M. WHITNEY,
HANNA & JOHNSTON, Solicitors. 35 Executrix.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Jane O'Neill, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of June next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 30th day of June, 1884.
his
JOHN ⋈ O'NEILL.
mark
35 Admisistrator.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administrationon the personal estate of Robert Stewart, lateofthe District of Columbia, dec'd,
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 21st day of April, 1885
his
JOHN ⋈ STEWART,
mark
ROBT. J. MURRAY, Solicitor 35 Administrator.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business Letters of Administration on the personal estate of Anne E. Waters, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 20th day of March next; they may otherwise by law be excluded from all benefit of the said estate
Given under my hand this 20th day of March, 1885.
GALENA JOUETT,
FRANCIS MILLER, Solicitor. 35 Administratrix.

THIS IS TO GIVE NOTICE
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Martha A. Lachman, late of the District of Columbia, dec'd
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 14th day of November, next; they may otherwise by law be excluded from all benefit of the said estate,
Given under my hand this 14th day of November 1884.
ARETAS M. LEGG,
MILES DEAN, Solicitor. 35 Executor.

Legal Notices.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William H Cross, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 29th day of December next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 29th day of December, 1884.
MARY A. CROSS,
LEMUEL FUGITT, Solicitor. 35 Administratrix.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John P. Ringgold, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of September next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 30th day of September, 1884.
MARY C. RINGGOLD
35 Administratrix.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Lena Relay late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 12th day of July next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 12th day of July, 1884.
THOMAS ROBINSON,
35 Executor.

THIS IS TO GIVE NOTICE,
That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Eunice C. Young, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of September next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 24th day of September, 1884.
WARREN S. YOUNG,
IRVING WILLIAMSON, Solicitor. 35 Executor.

THIS IS TO GIVE NOTICE,
That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration on the personal estate of Caroline Elizabeth Van New Kirk, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of March next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 10th day of March, 1885
BENJAMIN F. EVANS,
E. B. HAY, Solicitor. 35 Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 31st day of July, 1885.
ANDREW J. AVERY
v. } No. 9656.
JULIA A. JOHNSON ET AL
On motion of the plaintiff, by Mr. Irving Williamson, his solicitor, it is ordered that the defendants Julia A. Johnson and William Johnson, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.
By the Court. A. B. HAGNER, Justice.
True copy. Test: 31 R. J. MEIGS, Clerk.

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Washington Law Reporter

WASHINGTON - - - - - - September 5, 1885.

GEORGE B. CORKHILL - - - EDITOR

The American Bar Association

The committee which was appointed by the American Bar Association, to consider and report "whether the present delay and uncertainty in judicial administration can be lessened," in its report, says, *inter alia:*

"We are obliged to admit that most of the blame for the delay and uncertainty which we have been discussing rests upon the profession of which we are members, in both its branches, whether on the bench or at the bar. We are a host in numbers; we have influence direct and indirect, greater than that of any other profession or class of men in the country; we are part and parcel of the judicial establishment; we know best the laws of the land as they are, and we should know best what they ought to be; we can make ourselves heard and heeded in every legislative hall, in every executive chamber and on every bench of justice; and we have given pledges, not less binding because not expressed in words, that the functions with which the state has endowed us shall be used to promote justice, not alone by assisting suitors in their private controversies as they arise, but by doing our best to make the occasions of such controversies as few as possible, and the issue thereof as speedy and as near the right as we can make them. That we have failed so long to redeem these pledges is no reason for failing longer. Let us redeem them now."

THE Supreme Court of Pennsylvania, in the case of Grier v. Shade, has decided that it is not unlawful to settle a case where a prosecution has been brought for obtaining money or goods under false pretences. The Chief Justice, in delivering the opinion of the court, said: "It is well settled that an agreement in consideration of stifling or compounding a criminal prosecution for felony or misdemeanor of a public nature is void. There are, however, misdemeanors of an inferior class, in which the public is presumed to have less interest. They are assumed to affect chiefly the parties especially aggrieved thereby. The settlement of offences of this class is not illegal. The offence of obtaining money by means of false and fraudulent representations with intent to cheat and defraud, is an offence for which there may be also a remedy by action and may be settled.

AN extremely interesting case has been introduced into the English courts to decide how much of a book may be reprinted by a newspaper, without violating the copyright. When Messrs. Kegan, Paul & Co. sent out General Gordon's Khartoum Diaries, they requested that the extracts used by the editors should not be so copious as to injure the sale of the book. Just what amount of quotation was likely to affect the sale of the volume apparently met with a diversity of opinion. The *Pall Mall Gazette* copied sufficient matter to fill two of its pages, and now the publishers bring suit for damages against the paper, arguing that the paper copied more passages than were required for the purpose of criticism. It was certainly true in the case of Gordon's diaries that the very gist of the work appeared in both English and American newspapers before readers had an opportunity to purchase and examine the volume for themselves. At last reports the case had been adjourned under circumstances indicating an unlikelihood of a definite settlement. The matter seems to have been meant only as a hint to publishers, but it is significant.

SECOND COMPTROLLER MAYNARD has disallowed vouchers of Paymaster Stevenson amounting to $400, which was expended by Rear Admiral Jouett in entertaining distinguished guests at the New Orleans Exposition, on the ground that there is no appropriation for such purposes. The amount will be deducted from Admiral Jouett's pay. Comptroller Maynard says: "It is one of the penalties of official position that the incumbent is sometimes re-

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quired by social usage or the etiquette of his station to extend hospitalities to persons and upon occasions when, as a private citizen, he would be free from such obligations. But it is a burden voluntarily assumed and apparently not of such magnitude as to repress the ambition of men to seek public positions. The vouchers show that the money was received by Rear Admiral Jouett, commanding the squadron, and as it is money belonging to the United States unlawfully expended, it may be followed into whatever hands it can be traced and restitution compelled. It should, therefore, be charged against the latter officer (Jouett) in his accounts, and be regarded as an advancement upon his salary."

Supreme Court District of Columbia

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY

THE SECOND NATIONAL BANK OF WASHINGTON *vs.* FRANK HUME AND JAMES K. CLEARY, Surviving Partners of HUME, CLEARY & CO.

LAW. No. 23,258.

Decided May 25, 1885.
Justices COX, JAMES and MERRICK sitting.

1. While it is perfectly competent for the holder of commercial paper to rest, in the first instance, upon the proof of the signature of the party to be charged as in the case of the last endorser, yet when the defendant in such a case offers to prove that there was fraud or illegality in the transaction, such proof is admissible, and when admitted it changes the burden of proof and throws upon the plaintiff the further obligation of accounting for the manner in which he obtained the paper and of showing that it was *bona fide* and for value received.
2. In a suit against a partnership firm as endorsers upon a promissory note signed individually by one member of the firm and endorsed by him, first with the name of one of the members of the firm and then with the firm name (which endorsements the defendants alleged to be fraudulent), it is competent for the defence to show that the note had never been the note of the first endorser or of the firm; that no value had been received for it by either of the parties subsequent to the drawer; that the note had been discounted by the drawer at the bank (the plaintiff) for his own benefit, and was treated throughout by the bank and the drawer as his own property. And such proof should go to the jury with appropriate instructions from the court in order that they may determine from all the facts and circumstances of the case whether the accommodation was made for the benefit of the firm or for the benefit of the drawer. And if the jury should find (as is their exclusive province) that the accommodation was for the drawer in his individual capacity, and that the name of the firm was put there as an accommodation endorser, then before the bank could recover it would be necessary for it to establish the fact that the drawer had authority so to use the name of the firm.
3. It is not enough, however, that the defendants show that the plaintiff had reason to believe that there existed these infirmities in the note. They must show knowledge on the part of the plaintiff; but this knowledge the jury may infer from the testimony.

STATEMENT OF THE CASE.

This was an action against the defendants as indorsers of the following paper:

"$1,200. WASHINGTON, D. C.,
Sept. 27, 1881.

"Thirty days after date I promise to pay to the order of Frank Hume twelve hundred dollars, value received, with 8 per cent. interest until paid. Payable at 2d National Bank.

THOMAS L. HUME."

Endorsed:
"FRANK HUME.
"HUME, CLEARY & CO."

Defence: That the endorsements did not bind the defendants, because made by Thomas L. Hume to raise money for his individual benefit without the knowledge or consent of his partners, of which the plaintiff had notice.

Issue being joined the plaintiff gave evidence tending to prove that on and before the date of the note in suit Thomas L. Hume, Frank Hume, and James K. Cleary were partners in trade under the name of Hume, Cleary & Co., and carried on the business of wholesale and retail grocers and liquor dealers in the city of Washington, D. C.; that the endorsement of the firm name on the note in suit was in the handwriting of Thomas L. Hume, who died a few days before the maturity of the note; that the note was presented by the notary of the plaintiff to its bookkeeper at the counter of said bank and payment demanded at 4 o'clock in the afternoon on the 29th of October, 1881, the date of its maturity, and, not being paid, was protested, and the 30th of October, 1881, being Sunday, notice of demand, non-payment and protest was on the 31st of October, 1881, delivered to Frank Hume, and also, on behalf of the firm of

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Hume, Cleary & Co., to James K. Cleary. The attorney for the plaintiff then offered to read to the jury the note and certificate of protest, and to such reading the defendants' attorney objected, because no evidence had been given of the handwriting of the maker and first endorser of the note; but the objection was overruled and the note and certificate of protest allowed to be read; to which ruling the defendants excepted.

The plaintiff then rested.

Thereupon the defendants offered to prove that the endorsement of the name of Hume, Cleary & Co. was without the knowledge, authority or assent of the defendants, or either of them, and in violation of the articles of co-partnership of the firm of Hume, Cleary & Co.; and further, that the first information received by them, or either of them, of said endorsement was the notice of protest of the said note, and neither of said defendants ever confirmed or ratified said endorsement; and, further, that the name of Frank Hume upon the said note was not in the handwriting, nor within his knowledge, authority, or assent, and that the same was a forgery, and that the first information he had of the endorsement was through the notice of protest of the said note; and further, that no proceeds whatever of the said note ever went to the said defendants, or either of them, nor did any benefit ever accrue to them, or either of them, or to the said firm, from the said note; and further, that the transaction evidenced by said note never had any existence, but was wholly fictitious, and that the said note was made by the said Thomas L. Hume, and the name of Frank Hume was forged thereon, and the endorsement of Hume, Cleary & Co. was made by said Thomas L. Hume in fraud of his co-partners, and for the purpose of obtaining money for private advantage.

And the defendants, by their counsel, claimed that the aforesaid evidence was admissible, because the same affected the said note and endorsements with fraud and forgery, and threw upon the plaintiff the burden of showing that it paid value for said note, and, in taking the same, acted in good faith. And the said offered evidence being objected to by counsel for the plaintiff, the court refused to allow the same, or any part thereof, to be given to the jury. And the court decided that the several matters so offered in evidence were, and each of them was, inadmissible in evidence, unless the defendants further proposed to prove that the said matters were known to the plaintiff at the time it discounted the note sued on, or that the plaintiff had notice of the same, or that the plaintiff received the said note in bad faith.

And to the said ruling that the said evidence, or any part thereof, was inadmissible to shift the burthen of proof as to value or good faith, and unless the defendants should further prove affirmatively knowledge or notice or bad faith on the part of the plaintiff, the defendants excepted severally to the refusal of the court to allow each proposition of fact contained in their offer.

The defendants then gave evidence tending to prove that Thomas L. Hume had a private account with the plaintiff; that the original note (of which the note in suit was the last renewal) submitted by Thomas L. Hume to the plaintiff for discount was dated August 11, 1881, for $3,000 at five days, which by a series of curtails and renewals reached the note in suit; that the proceeds of said discount was placed to the private account of Thomas L. Hume with the plaintiff; that no portion of the proceeds of said discount went to said firm of Hume, Cleary & Co., or to either of the defendants, nor were the defendants consulted or notified of said transaction; that the renewal notices were always sent to Thomas L. Hume; that Thomas L. Hume never spoke to the defendants or either of them in relation to the transaction; that the first knowledge the defendants had of said renewals was at the trial of this cause and their first knowledge of the note in suit was after the death of Thomas L. Hume, when they received notice of protest; that M. G. Emery, president of the plaintiff corporation, frequently came to defendants' place of business, but always asked for Thomas L. Hume, and always talked privately with him; that defendants never spoke to Mr. Emery about this transaction, and never knew until the day of trial that one of

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the renewal notes was sent to the bank from the store of Hume, Cleary & Co.; that the defendants never knew that Thomas L. Hume was using the original note or any renewals of it for his private benefit, and never ratified his use of it; that the firm of Hume, Cleary & Co. was in good standing August 11, 1880, and never had occasion to borrow money, and that Thomas L. Hume, for seven or eight years before his death, was engaged in the dairy business and stock raising.

And, thereupon, the defendants offered to prove by Frank Hume, one of the defendants, that the plaintiff, when it discounted the series of notes mentioned in the evidence, had reason to know and believe that the endorsement of the firm name by Thomas L. Hume was used by him as a mere accommodation endorsement to enable him to get money by the discount of the notes, said money to be used for his private purposes and not for the purposes of the firm, and that the plaintiff, having reason to know and believe that said Thomas L. Hume was acting as aforesaid, failed to make inquiry as to whether said endorsement was made by the authority or with the assent of the defendants, and that such endorsement was not made by and with the authority or assent, and that the plaintiff, by discounting the said notes with such endorsement, and having reason to know and believe as aforesaid, enabled the said Thomas L. Hume to perpetrate a fraud upon his co-partners, and had acted in bad faith.

And the court thereupon inquired of the defendants' counsel whether he had reason to know or believe, or expected to prove anything other than such grounds for knowing or believing, the matters he spoke of, as were testified to by Mr. Cleary; to which the defendants' counsel replied: "No, sir; I think not;" and also inquired whether he expected to prove by this witness that the plaintiff had knowledge of the said fact supposed to constitute fraudulent dealing on the part of the said Thomas L. Hume, in procuring the discount of the said note, at the time it was discounted by the plaintiff, to which inquiry the counsel for the defendants replied in the negative.

Whereupon the court ruled that the said testimony so proposed to be offered was inadmissible, and refused to admit the same to be given by the defendants. To which ruling the defendants excepted.

The defendants then offered a number of prayers, as follows, all of which were rejected:

1. If from the whole evidence the jury shall find that the notes in the series given in evidence, beginning with that of the 11th of August, 1880, and ending with the note in suit, were presented for discount by Thomas L. Hume, the maker, for his individual account, and were so discounted by the plaintiff, then the transaction on its face imported that the endorsement of Hume, Cleary & Co. was an accommodation endorsement, and it was not competent for the said Thomas L. Hume to bind his co-partners by such endorsement of the firm name without their authority or assent; and if without such authority or assent the said Thomas L. Hume made the endorsement of the firm name on the note in suit, the defendants were not bound thereby and the plaintiff is not entitled to recover.

2. If from the whole evidence the jury shall find that the plaintiff, in discounting the notes offered for discount by Thomas L. Hume, and among them the note in suit, dealt with and treated the same as his individual property, then he, being the maker of the said notes, the endorsement of the firm name thereon was an accommodation endorsement, and it was not competent for him to bind thereby his co-partners without their authority or assent; and if the jury shall find that the endorsement of the firm name on the note in suit was made without such authority or assent, the defendants were not bound thereby and the plaintiff is not entitled to recover.

3. If from the whole evidence the jury shall find that in discounting the notes given in evidence, including the note in suit, the plaintiff dealt with and treated the same as the property of the firm of Hume, Cleary & Co., then the plaintiff was not bound to know that Thomas L. Hume could only use said paper in the usual course of business, and could not apply it to his private purposes without the authority or assent of his co-partners;

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and if the jury shall find that the said note was discounted by the plaintiff at the instance of the said Thomas L. Hume, and the proceeds applied to his private purposes by the plaintiff and by his direction, then the plaintiff is not entitled to recover.

4. The burthen of proof is upon the plaintiff to show that in discounting the note of the 11th of August, 1880, for the private benefit of Thomas L. Hume, and in renewing the same for such private benefit from time to time with the endorsement of Hume, Cleary & Co., it acted in good faith and with reasonable and proper precaution.

5. If from the whole evidence the jury shall find that the plaintiff knew, or had reason to know, that the said Thomas L. Hume was using the endorsement of the firm name in the transactions in evidence not for the purposes of the firm, but for his private purposes, then it was the duty of the plaintiff to know that the said Thomas L. Hume could not so use the firm name without the authority or assent of his co-partners; and if the jury shall further find that the firm name was so used, and for the private purposes of the said Thomas L. Hume, in the transactions with the plaintiff, without such authority or assent, then the plaintiff is not entitled to recover.

6. It is for the jury to find, under all the circumstances, whether the plaintiff knew, or had reason to know or believe, that the said Thomas L. Hume was using, in his transactions with the plaintiff, the endorsement of Hume, Cleary & Co. as an accommodation endorsement, or was using the said endorsement, not in the usual course of the business, but for private purposes; and if the jury shall find that the plaintiff knew, or had reason to know or believe, that the said Thomas L. Hume was so using such endorsement, then it was the duty of the plaintiff to inquire whether such use was by the authority or assent of the defendants before making discounts upon such endorsement, and if the plaintiff, instead of making such inquiry, made the discount of the notes mentioned in evidence, and the endorsement of the name of Hume, Cleary & Co. was used without the authority or assent of the defendants, and was used as aforesaid, then the plaintiff is not entitled to recover.

7. It is for the jury to find, under all the circumstances of the case, whether, in obtaining the discount of the 11th of August, 1880, and the subsequent renewals, the said Thomas L. Hume was acting in fraud of his co-partners, and whether, if he was so acting, the plaintiff knew, or had reason to know or believe, the same. And if the jury from the whole evidence shall find that the said Thomas L. Hume was so acting, and that the plaintiff knew, or had reason to know or believe the same, then the plaintiff is not entitled to recover.

8. If the jury find from the evidence that the endorsement of the firm name, Hume, Cleary & Co., on the note in suit, and on those which preceded it, was made by Thomas L. Hume, a member of said firm and maker of said note, without the knowledge or consent of either of the members thereof, and they did not ratify or confirm it, and further find that the plaintiff discounted the note under an agreement with the maker that the proceeds thereof should go to his individual credit, and not to the use of the firm, then the defendants are not liable in this action.

9. If the jury find from the evidence that the promissory note in suit, and those which preceded it, was not passed by Thomas L. Hume, the maker thereof, to the plaintiff in the course of the ordinary business and transactions of the firm of Hume, Cleary & Co., and further find that neither of the defendants had any knowledge or information in relation thereto prior to the maturity of the note in suit, and that no part of the proceeds of any of said notes was applied to partnership purposes, then the plaintiff is not entitled to recover.

10. If the jury find from the evidence that the plaintiff knew at the time it received the original of the note in suit, and before it gave anything of value therefor, that the partnership name was endorsed thereon by the maker for his sole use and benefit, and the proceeds were so applied, and further find that the defendants, or either of them, had no knowledge of the

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existence of said note, nor of the renewals thereof, and never consented to nor ratified the endorsement of the firm name on said note, nor on any of the renewals thereof, including the note in suit, then the plaintiff is not entitled to recover.

11. If the jury find from the evidence that the original of the note in suit was made by Thomas L. Hume, without the knowledge or notice of the defendants, or either of them, endorsed the name of the firm, Hume, Cleary & Co., on said note, and appropriated the proceeds thereof to his own use, without the knowledge or consent of the defendants, or either of them, then he acted in violation of his obligations and duties to the firm and in fraud of the firm; and if the jury further find from the evidence that the plaintiff had knowledge or notice, before it paid value for said note, that said Thomas L. Hume intended to appropriate the proceeds thereof to his own use, and not to the use of the firm, and further find that the defendants, or either of them, derived no benefit from said note or either renewal thereof, including the note in suit, and never consented to nor ratified such use of the name of the firm, then the plaintiff is not entitled to recover.

12. When a party takes negotiable paper, made, accepted or endorsed by one of several partners, in or with the partnership name, and the fact that such name was not signed or endorsed in the regular course of the business of the firm is apparent on the face of the instrument, or necessarily implied in the nature of the transaction, such party cannot though he may have parted with value on the faith of the paper, charge the other members of the firm, except upon proof that they assented to the transaction. In every such case he is chargeable, as matter of law, with notice of want of authority in the individual partner to bind the firm without their express assent.

13. When the fact, though existing, that such name was not signed or endorsed in the regular course of business of the firm is not apparent from the face of the instrument, and the nature of the transaction appears to be susceptible of different conclusions, the question of notice is one of fact, to be determined by the jury under all the circumstances. In every such case the burden is again upon the plaintiff, though he may have parted with value, to satisfy the jury, either that the circumstances of the case did not constitute notice to him, or that, if they did, the other members of the firm assented to the transaction.

14. When the fact, though existing, that such name was not signed or endorsed in the regular course of the business of the firm is not apparent from the face of the instrument, and the nature of the transaction appears to have been of such a character as to give the plaintiff a right to suppose that it was a partnership transaction, the members contesting their ability must not only show that in fact it did not constitute such a transaction, but also that the plaintiff had in some way actual notice. In every such case the burden is shifted upon the defendant to establish notice.

And thereupon the court having severally refused to give each of the said prayers, and the defendants having excepted severally to such refusals, the court charged the jury as follows:

GENTLEMEN OF THE JURY: In your absence I have decidedly expressed my opinion as to the prayers which were offered by the defendants, and have rejected all of them. I have also considered it my duty to withdraw from your consideration a large mass of evidence, which was adduced by the defendants, tending, as they insisted, to prove some fraud in connection with this note. All of that class of evidence has been withdrawn from you. I therefore instruct you that if you shall find from the evidence that Thomas L. Hume was a partner of the firm of Hume, Cleary & Co., within the period from August 11, 1880, down to this date, that on the date of this note he signed it, and afterwards endorsed the name of Hume, Cleary & Co. upon the back of the note; that that note was discounted by the plaintiff, the Second National Bank; that after that note became due, notice and due demand was made upon the defendants in this action and protest was made upon its non-payment, according to the evidence given here by Mr. Balloch in the case, then, if you shall find those facts, the

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plaintiff is entitled to a verdict upon that note according to its face. There is no dispute that this gentleman was a member of that firm, for it was proved by the defendants as well; that this note was discounted by the bank; and also there is no dispute about the protest. If you find those matters which I have just stated to you, then your verdict should be for the plaintiff.

And to the withdrawal of the evidence from the jury, except in the particulars stated by the court, and to the instruction as given by the court, the defendants excepted severally.

W. F. MATTINGLY for plaintiff.

W. D. DAVIDGE, L. G. HINE and JOHN E. NORRIS for defendants.

Mr. Justice MERRICK delivered the opinion of the court.

In the case of Frank Hume and James K. Cleary, against whom a suit was brought by the Second National Bank of Washington, the plaintiff was the holder of a piece of supposed commercial paper in this form of words:

"$1,200. WASH., D. C., *Sept.* 27, 1881.

"Thirty days after date I promise to pay to the order of Frank Hume twelve hundred dollars, value received, with eight per cent. interest until paid, payable at Second National Bank.

"THOMAS L. HUME.

Endorsed:

"FRANK HUME.

"HUME, CLEARY & Co."

At the trial of the cause the plaintiff offered in evidence the promissory note and the protest and proved the signature by Thomas L. Hume, the drawer, who was himself a member of the firm of Hume, Cleary & Co., of the firm name as the last endorser, and then rested.

In that state of the case the defendant offered to prove that the note had originated in fraud; that the name of Frank Hume, the first endorser, was forged; and that the name of the firm, Hume, Cleary & Co., had been placed there by the drawer without authority, and that the firm knew nothing whatsoever of the existence of the transaction and had derived no benefit whatsoever from it.

The court upon that offer of proof rejected the testimony as inadmissible in that stage of the case. In this we think there was manifest error. The rule of law has been laid down by a concurrence of all the great authorities in this country to this effect: that, while it is perfectly competent for the holder of commercial paper to rest, in the first instance, upon the proof of the signature of the party to be charged, as in the case of the last endorser (which carries proof of the others and of the notice of protest—and that proof raises a *prima facie* case of good consideration and *bona fide* ownership), yet when the defendant in such a case offers to prove that there was fraud or illegality in the transaction, such proof is admissible, and, when admitted, it changes the burden of proof and throws upon the plaintiff the further obligation of accounting for the manner in which he obtained the paper, and of showing that it was *bona fide* and for value received.

This doctrine is very clearly laid down by the Supreme Court of the United States in the case of Commonwealth against Clark, 94 U. S., 285. But there is a later case, which was not referred to in the argument of the case at bar. It was decided in the State of Maryland, at October Term, 1881, and it so well expounds the rule of law and the reason of it—not that it is better authority, but being later and quoting and relying upon the decision in 94th U. S. which sets forth the rule of law clearly—that I may be pardoned (in giving the opinion of this court) for using the language of that eminent tribunal for the purpose of showing what the opinion of this court is in that respect. I read from the case of Cotton *vs.* Pusey in 57th Maryland, p. 452. The court says in its opinion:

"By the fifth prayer the court was asked to instruct the jury that if the note was transferred to the plaintiff before its maturity, then the onus was on the defendant to show by evidence that the plaintiff had notice of the want of consideration for the note, and the fraud in its procurement from the defendant, and that, in the absence of such evidence of notice to the plaintiff, he was to be presumed to be the holder of the note for value without no-

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tice. This clearly is not in accordance with the law. It is true that the endorsee or transferee in an action against the maker of a negotiable note has nothing to do in the opening of his case but to prove the signatures to the instrument and introduce it in evidence, for the instrument goes to the jury with the legal presumption that the plaintiff became the holder of the same for value at its date or before maturity, in the usual course of business, without notice of anything to impeach his title. He is at liberty to rest upon this presumption, and is not bound, in the first instance, to show the circumstances under which he obtained the note or that he paid value for it, but for the defendant to show, by such proof as may be properly left to the jury to consider, that the instrument was procured by fraud, or was fraudulent in its inception, or that the consideration was illegal, or that it had been lost or stolen before it came to the possession of the holder. The burden of proof is changed and it is then incumbent upon the plaintiff to show that he acquired the note *bona fide* for value, in the usual course of business, before maturity and under circumstances that create no presumption that he knew of the existence of the facts that impeach the validity of the instrument. This is a well established rule applicable to negotiable instruments, and it is said to be wise and salutary in the protection it affords. It proceeds upon the presumption that the person who has been guilty of the fraud or illegality in obtaining the instrument would dispose of it and would place it in the hands of another person to sue upon; and it is because of such presumption that the proof of fraud, illegality or loss casts upon the holder the burden of showing that he is a *bona fide* holder for value or under what circumstances and for what value he became the holder of the note."

There the rule is laid down emphatically, and clearly assigns the reasons upon which the well founded rule is based in morals, and refers to 94th U. S., among others, and all the late authorities sustaining fully the position of the court in that case.

That being the rule of law it is manifest then that the court below erred in its first ruling in rejecting the offered proof on the part of the defendants to show that the note originated in fraud and illegality and the forgery of the name of one of the parties.

In the further progress of the cause there was evidence offered on the part of the defendants, and admitted subject to exception, for the purpose of showing that the note had never been the note of the partnership or of the first endorser, and that no value had been received for it by either of the parties subsequent to the drawer, and further that the note was discounted by the drawer at the bank for his own benefit, and was treated throughout by the bank and the drawer (although the drawer was one of the parties composing the firm), as his own property.

It was proper upon that form of proof to submit the whole case to the jury to determine, as a matter of fact, whether the holder of the paper, at the time he discounted it on behalf of the drawer, was dealing with the drawer in his individual capacity or was dealing with him as a member of the firm for the benefit of the firm. Occupying the double character of drawer of the note and also one of the members of the firm endorsing the note, it would have been competent for him, notwithstanding the unusual form ot the note, to have treated it as a note offered for discount by him in his character as a member of the firm for the benefit of the firm; and if he had professed to be dealing with the discounting bank in his character as a member ot the firm for the benefit of the firm, the form of the paper, when it stands thus in the peculiar dual relation of a partner so dealing, would not have been as in the case in the 95th U. S.—the cashier of the Shawnee bank dealing with the paper of the bank—satisfactory proof that it was only accommodation paper on the part of the bank who was put there as an endorser, and that the party was therefore charged legally with knowledge and notice of the infirmity of it and bound to see whether the accommodation endorsement was for the benefit of the party offering it and duly authorized, but, on account of his dual character, he would still have had the right to deal

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with it as partnership paper if he had so dealt with it.

But the proof here goes on to show that he dealt with it as his individual paper; that the credit went to him; that he was charged as drawer, and his co-partner, Frank Hume, was charged as endorser, and the firm was charged as endorser; the whole course of dealing therefore indicating, or furnishing proof so to speak, that he was dealing with it as for his own benefit and using the firm as an accommodation endorser. All that proof was proof competent, therefore, to go to the jury notwithstanding he was a partner in the house, and notwithstanding he presented it and signed the name of the partnership. It was proof competent to go to the jury with appropriate instructions from the court, in order that they might determine, from all the facts and circumstances of the case, whether the discount was made for the benefit of the firm or for the benefit of the drawer. And if the jury should find (as a matter of fact it was for them exclusively to find) that the accommodation was for him in his individual capacity, and that the name of the firm was put there as an accommodation endorser, then, before the bank could recover, it would be necessary for it to establish the fact that he (the drawer) had authority so to put the name of the firm as accommodation endorser.

The court, therefore, under these views, erred in rejecting that mass of testimony, erred in its charge and erred in rejecting a large proportion of the prayers of the defendant based upon the theory of the law which I have indicated. Some of the prayers of the defendant are erroneous for various reasons, but there were prayers enough to justify them to go to the jury upon the theory that I have indicated.

The fifth, sixth and seventh prayers of the defendant were erroneous in this; That they put it to the jury to find that the plaintiff knew or had reason to believe there were these infirmities. That, under the rule as laid down by the Supreme Court of the United States, is not enough. In the case of Goodman *vs.* Simons, the Supreme Court of the United States have said it must be knowledge and not reasonable belief. The facts I have adverted to were competent to go to the jury from which they would have the right, according to the weight they would give to the testimony on the one side or the other, to determine whether, in point of fact, he had knowledge of the infirmity of the paper, and they had the right to make the deduction, if they so pleased, that he had knowledge, and if they should draw the inference of knowledge from this evidence, which was competent evidence to establish the fact of knowledge, then the plaintiff was not entitled to recover.

With this explanation of the prayers I need not criticize them any further than to say that upon a review of them the court finds, in view of this testimony which ought to have been admitted, that the court below should have granted the first, second, eighth and tenth prayers of the defendant. Those prayers covered the rule of law that I have just announced as being the true rule applicable to such a case, and would have given the defendants the benefit of standing before a jury to argue upon all the testimony as to whether or not the plaintiff, at the time he dealt with this negotiable paper, knew that it was not negotiated for the benefit of the firm and that the firm was an accommodation endorser, and therefore the firm was not to be bound unless knowledge was brought home that the firm had authorized the endorsement for that purpose.

The judgment of the court below will therefore be reversed and the case will be remanded for a new trial in order that on a second trial it may be conformed to the rules which we have laid down as the true rules which govern a case circumstanced as this one is. There were other exceptions in the case, but it is not necessary to advert to them.

FIFTEEN years ago a Wells-Fargo stage coach coming out of Blackfoot, Idaho, was robbed of five hundred pounds of gold dust. The robbers were arrested and sent to the Deer Lodge Penitentiary, but they had succeeded in burying the gold, and no one has since been able to find it. Their sentences will expire in a few weeks, and the inhabitants of the town are said to be watching the prison doors to follow them to the treasure when they get out.

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Supreme Court Pennsylvania.

STROUD'S APPEAL.

1. The merits of the original judgment cannot be inquired into in a *scire facias* on that judgment.
2. As a general rule no defence can be made to a *scire facias* on a judgment except one arising subsequent to the judgment.

Appeal from the decree of the Court of Common Pleas of Susquehanna county.

MERCUR, C. J. The merits of the original judgment cannot be inquired into in a *scire facias* on that judgment. Pitts., Cincin. & St. Louis Railway Co. v. Marshall, 4 Norris, 187. As a general rule no defence can be made to a *scire facias* on a judgment except one arising subsequent to the judgment. Seymour v. Hubert, 11 Norris, 499.

The only defence in the trial of a *scire facias* on a judgment is a denial of the existence of the judgment or proof of a subsequent satisfaction in law or equity, or a discharge thereof. Dowling v. McGregor, 10 Id., 410.

When a judgment is opened it is not subject to set off generally. The defendant may attack the validity of the claim on which the judgment is founded; the good faith of the transaction connected with the consideration; subsequent payment of the debt or equitable discharge therefrom. The defence must be one which must either at law or in equity, have attached to the judgment or to the consideration on which it rests. Beatty v. Bordwell, 10 Id., 458.

The practice of opening judgments to establish a defence which has originated since the rendition of the judgment is improper. Such a defence does not impair the original validity of the judgment. An issue should be formed to try the facts which are alleged to have so attached to the judgment as to constitute a payment or release thereof. It follows there was no error in the court discharging the rule and in refusing to open the judgment for the reasons shown.

Decree affirmed and appeal dismissed at the cost of the appellant.

Jurors Impugning Their Verdict.

On a recent motion for a new trial, before Lord Coleridge and Mr. Justice Butt, a point of practice was incidentally decided, which, so far as we remember, has not been presented to the courts for many years. In support of the motion an affidavit was tendered, made by some or all of the jury, and stating that in giving their verdict they had misapprehended the issues before them. The court unhesitatingly refused to admit the affidavit, on the ground that a jury cannot be heard to impugn their own verdict. If the precedents of the last century are worth anything under our modern practice, there can be no doubt that this decision was correct. The authority chiefly referred to was Clark v. Stevenson. 2 W. Bl., 803. The facts of this case are not strictly in point, for all that was relied on there as the ground for a new trial was an answer given by one or two of the jury in reply to a question put from the bench after the verdict had been given, the tendency of this answer being to show that the jury had gone against a very clear direction of the judge as to the issue before them. A case rather more to the purpose, though it was not a motion for a new trial, would be that of Jackson v. Williamson (2 T. R., 281), where the whole jury made an affidavit that in giving a verdict for the plaintiff for £30 they imagined he could get £60 in all, to which amount they considered him entitled. A principle of very wide application as regards cases of this kind is laid down in R. v. Woodfall (5 Burr., 2661), the "Junius" libel case. Lord Mansfield there says that, though in cases of doubt as to what passed in giving the verdict, the affidavits of jurors may be read on a motion for a new trial, yet "an affidavit of a juror never can be read as to what he then thought or intended." Lord Mansfield's language on this subject suggests that he would have taken anything but kindly to the modern practice of jurymen writing to the newspapers in defence or explanation of their verdict.

It is pretty well settled that a jury cannot be heard to impugn their verdict on the ground of their own misconduct. Certainly they cannot, where the misconduct is that of drawing lots for the verdict. Although this offence is fatal to a verdict, it can only be proved by primary evidence of some one outside the jury, the jury not being allowed to convict themselves of a "high misdemeanor." Lord Mansfield is again the chief authority for this doctrine. Vassie v. Delaval, 1 T. R., 11. The old reports are particularly rich in evidence as to the interpretation which is occasionally put on the oath to "well and truly try." In Aylett v. Jewell (2 W. Bl., 1299) we have it on the authority of the defendant's attorney that the jury, being hopelessly divided, agreed to put their names on slips of paper into a hat, draw out six, and return a verdict in accordance with the opinion of the majority of these six. One of the queerest verdicts on record is that in Hall v.

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Payser, 13 M. & W., 600. This was an action on a bill of exchange for £50, and the defendant pleaded that the plaintiff accepted goods in satisfaction. There was no evidence whatever of part satisfaction; it was all or nothing. The jury, however, gave the plaintiff a verdict for £25. The court came to the conclusion that the jury, being unable to agree in any other way, had split the difference between plaintiff and defendant, and they ordered a new trial accordingly. There is a story in 10 M. & W., 137, of two jurymen who were so ill advised as to go and dine and sleep at the defendant's house at the close of the first day of a trial, though, as the plaintiff did not impugn the good faith of the jury, the court here declined to interfere with the defendant's verdict. Disclosures of the secrets of the jury box have become less frequent of late years, but it is by no means certain that if they were forthcoming they would not be as interesting as ever.—*Law Times.*

Medical Examination of Plaintiff.

Professor Ewell, in his note in 24 Am. Law Reg., N. S., 535, on the subject of medical examination of the person upon the trial, throws the weight of his opinion in the affirmative on the question whether the court can require such an examination in civil cases.

This inquiry, when analyzed, practically separates itself into several.

First. When a party offers himself as a witness to prove an injury to his person, may he properly be allowed to exhibit to the jury the injured member? This question was answered in the affimative in the well known case of Mulhardo v. Brooklyn R. R. Co. (32 N. Y.), and it is really not a question of the examination of witnesses, but a question of the exhibition of an object, and must depend precisely on the same principle as the question whether counsel can exhibit the iron hook, the broken rail, or any other object the condition of which may be relevant to the inquiry.

Second. Where a witness has testified in his own behalf, can the court require him, as a part of a strict cross-examination, to exhibit the injured member to the cross-examining counsel, to the judge, or to the jury, or to all? This question involves the additional element of the right of a party against whom a witness is called and has testified, to test the truth of his statements in every proper way by cross-interrogatories,

Third. Can a party suing for an injury to the person, who has not offered himself as a witness on his own behalf, be required, at the instance of the adverse party, to submit the injured member to inspection, either under an examination before trial or at the trial? This question has several times arisen on examination before trial, but the principle would be the same if the plaintiff should not offer his own testimony on the trial, but be called by defendant, or if he were an infant too young to testify.

The answer to this question is not aided by considerations drawn from the right of cross-examination, but turns simply on the power of the court to compel a party to submit to examination of his members when the condition of such members is relevant to the case.

In a case in our supreme court, it was once held, on an issue as to the warranty of a watch, that the court could not compel the production and exhibition of the watch by subpœna or otherwise, though the learned court gave no reason except that it was not usual or was unprecedent. The decision was put on the ground of *non possumus.*

Fourth. Assuming that the court have power in either of the foregoing classes of applications, have they power to go a step further and require the witness to submit his injured member to the inspection of another witness—an expert—while the latter examines the member, forms an opinion upon its condition, and the causes and probable consequences of that condition, and gives his conclusions to the jury, demonstrating his reasons, if need be, by pointing out the indications in the appearance of the member?

This is going beyond the power to cross-examine as hitherto understood and recognized and beyond the power of compelling answers to questions.

Fifth. Can the court, in either of the foregoing classes of cases, compel the person to perform an act involving the use of the injured member in order to manifest to the jury the degree of capacity or incapacity existing? This may seem to be going one step further still, but the question appears to us to be essentially identical with the previous one. The suffering one's foot to be unclothed and lifted into view while the physician discourses upon it to the jury is as truly an act, though of the passive sort, as the endeavor to limp across the room upon the foot.

Cases in which the court have required a person to write in the presence of the jury when a question of handwriting was before them involve the same principle.—*N. Y. Daily Register.*

"WHAT is the man charged with?" asked the judge. "With whiskey, your honor," replied the sententious policeman.

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NOTES OF RECENT DECISIONS.

1. *Corporations: Negligence; Fellow Servants; Defective Machinery.*—A corporation is liable to its employee for injuries from defective machinery, of which its superintendent had notice.

2. *Ibid: Ibid; Risk.*—A railroad employee takes the risk embraced within his special line of employment only.

3. *Negligence: Contributory Negligence; Proof.*—Unless contributory negligence is apparent in the plaintiff's case, the defendant must establish it.

4. *Damages: Loss of Foot.*—Ten thousand dollars damages for the loss of a foot, under the circumstances of this case, is not excessive. [Bowers v. Union Pacific R. R. Co., S. C. Utah Ter., Jan. Term, 1885.]

Chattel Mortgage: Filing; Error of Recording Officer.—A chattel mortgage is deemed recorded when it is deposited with the proper officer for record. An error of such officer in recording the mortgage does not affect its validity as to third parties. [Meherin v. Oaks, S. C. Cal., May, 1885.]

Married Women: Contract for Family Supplies.—For goods purchased for ordinary domestic use in a family the husband is presumptively liable. This liability can be overcome as against the wife only by proof of an express contract on her part, or by circumcircumstances, other than the procurement of the goods, establishing an implied contract. [Chester v. Pierce, S. C. Minn., May, 1885.]

Testator in his will stated: "I also allow my wife, Rebecca, to have any part of my dwelling house which I now reside in, which she may think proper, to take and occupy during her natural life, for her use and the use of my two daughters, Mary Jane and Charlotte, so long as they remain single or unmarried." Rebecca, the wife, and Charlotte, one of the daughters, are dead; Mary Jane is living and remains single.

Held, that on the death of the widow, the right to the use of the house ceased; the remaining daughter, after that, was not entitled to occupy it. [Kearns v. Kearns, S. C. Penn.]

1. *Statute of Limitations: Acknowledgment.*—To remove the bar of the Statute of Limitations by an acknowledgment of the debt, there must be a clear and definite acknowledgment or specification of the amount due, or a reference to something by which such amount can be definitely and certainly ascertained, and an unequivocal promise to pay.

2. *Ibid: Uncertainty.*—Any uncertainty, either in the acknowledgment or identification of the debt, is fatal. [Landis v. Roth, S. C. Penn., June 4, 1885.]

The Courts.

IN EQUITY.—New Suits.

August 29, 1885.

9585. Edward Devlney v. Hugh Murphy. Injunction. Com sol, W. T. Bailey.

August 29, 1885.

9586. Robert A. Boyd v. Samuel Strong et al. Injunction. acct, &c. Com sol, H. B Moulton.

August 31, 1885.

9587 Mary E. Robertson v. John W. Slater et al. To quiet title Com sol. W. R Woodward.

Sept. 1, 1885.

9588. William B. Vinton v. Elizabeth Vinton. For divorce. Com sol, W. P Williamson.

9589. Margaret Jones et al. v. William C. Tolson et al. To annul deed. Com sol, J. McD. Carrington.

9590. Sarah B. Smith v. Claude W. Smith. For divorce. Com sol. C Storrs.

9591. Robert A. Hooe v. George Peter, jr. To clear title. Com sol. J. J. Johnson.

Sept. 2, 1885.

9592 Caroline Day et al. v. The B & O. R. R. Co. Injunction. Com sols. Carrington and Cook.

9593. Charles A. Maudley v. Lavinia Maudley. For divorce. Com sol, T. J. Mackey.

Sept. 4, 1885.

9594. Henry J. Ruppert v. John A. Ruppert. Com sol, F. Miller.

Sept. 5, 1885.

9595. Ella R. Jones v. May S. Jones et al. To sell. Com sol, W. A. Cook.

CIRCUIT COURT.—New Suits at Law

August 28, 1885.

26350. C. Altman & Co. v. Sallie H. Owens et al. Md. Judgment $129. Piffs attys, W. B. Webb and H. R. Webb.

August 29, 1885.

26351. Henrietta C. Meizerott et al v. Thomas F Hackatt et al. Replevin, $150. Piffs atty, C A. Walter

August 31, 1885

26352. Henry Stafferd v The District of Columbia. Damages, $5,000 Piffs attys, Phelps and Bundy.

26353. Patrick Corcoran v. Alberto Campbell. Note, $250. Piffs atty, A. K. Browne.

Sept. 2, 1885.

26354 William H. Dunn v. Alexander M. Proctor. Note, $310.72. Piffs atty, F. T. Browning.

Sept. 3, 1885.

26355. Bateman & Co. v. William P. Canaday et al. Note $2,000. Piffs attys, Birney & Birney.

26356. Charles G. Ball & Son v Charles S. Hill. Acct., $284 56. Piffs attys, Carusi & Miller.

26357. William B. Jackson et al. v. William C. Adams et al. Note, $2,000. Piffs attys, Edwards & Barnard.

26358 W. M. Galt & Co. v. George W. Pasco. Acct., $210.95. Piffs attys, Riddle, Davis & Padgett.

Sept 5, 1885.

26359 Isaac S. Lyon v. Thomas Martin. Appeal. Defts atty, H. B Moulton.

26360. Henry D Cooke et al. v. Uriah H Painter. Acct., $4130.75. Piffs atty, F. H. Mackey.

26361 Isabella Ricks v. Richard H. Read et al. Damages, $5,000. Piffs atty, E. H. Thomas.

26362. Patrick Corcoran v. Daniel Green. Jud't of Justice O'Neal, $97.50.

26363. Same. Judg't of Same, $94.10.

26364. Same. Judg't of Same, $95.50.

26365. C. P. Hurst & Co. v. The Anglo American Insurance Co. On policy, $2,300. Piffs attys, Davidge and Edwards & Barnard.

26366. Patrick Corcoran v. Daniel Green. Damages, $5,000. Piffs atty, George E. Harris.

PROBATE COURT.—Justice Morrick.

August 28, 1885.

Estate of Jacob J. Fleishell. Will proved.

Estate of Benedict Milburn Letters of administration granted to Wm. G. Henderson.

Estate of Jane R. Eliot. Hamilton M. Rogers appointed collector on bond of $4 000.

Estate of Wm. Cahill. Petition of Catharine Dentz for letters of administration. Order of publication.

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Estate of Henrietta P. Plant. Order of publication.
Estate of James Mason. John Mason appointed administrator. Bond, $500
Estate of Charles McDougal. Letters of administration issued to Georgianna McD. Adams. Special bond, $2,000.
Estate of Hugh B. Stockman. Petition of Anna B. Stockman and A. H. Stockman for letters testamentary.
Estate of Dennis F. Ryon. Grace A. Ryon appointed administratrix. Bond, $15,000.

August 29, 1885.

Estate of Benedict Milburn. Appeal to General Term.
Estate of Robert M Reynolds. Orpha W. Reynolds bonded and qualified as executrix.

Sept 2, 1885.

Estate of Jane R. Eliot. Petition of James B. Robinson, of Bloomsburg for letters of administration and order granting same. Bond, $3,000.

Sept. 3, 1885.

Estate of Samuel Chase Barney. S. Chase de Krafft appointed administrator. Bond, $1,000.

Sept. 4, 1885.

Estate of Jacob J. Fleishell. Edward A. Fleishell appointed administrator. Bond, $400.
Estate of George Weinandt. Petition of George Viehman for letters testamentary. Order of publication
Estate of Samuel C. Barney. S. Chase de Krafft bonded in $1,000, and qualified as administrator.
Estate of Edward P. Walsh. Wm A. Redmond appointed administrator. Bond, $100.
Estate of Hugh R. Stockman. Andrew H. and Anna B. Stockman appointed guardians to orphans of deceased.

Sept. 5, 1885.

Estate of Carl G. Freudenburg. Order of publication returnable September 25, 1885.

Legal Notices.

THIS IS TO GIVE NOTICE.
That the subscriber, of Washington City, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters of Administration on the personal estate of Edward P. Walsh, alias Edwar Walsh, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 5th day of September next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 5th day of September, 1885.
O. H. HERRING, Solicitor. 36 W. A. REDMOND.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
MARY FURMAGE ET AL. v. JANE R. FURMAGE ET AL. } No. 9267. Eq. Doc. 24.
Irwin B. Linton, trustee in the above cause, having reported to the Court that, pursuant to the decree therein, he sold at public auction, on June 30th, 1885, sub-lot 14, in square 139, in the City of Washington, in the District of Columbia, to John A Prescott, for the sum of $3710, being at the rate of $1.20 per square foot:
It is this 1st day of September, 1885, by the Court ordered that the said sale be ratified and confirmed unless cause to the contrary be shown on or before the 1st day of October, 1885.
Provided a copy of tels order be published in the Washington Law Reporter once a week for three successive weeks prior to said last-mentioned day.
WM. M. MERRICK, A. J.
A true copy. Test: 36 R J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
HENRY SILSBEE, Trustee, v. SARAH G. GARLAND et al. } No. 7369. Eq. Doc. 20.
Joseph J. Darlington and Robert Byrd Lewis, trustees in the above cause, having reported to the Court that, pursuto decree therein, they sold at public auction on July 3d, 1885, part of lot numbered thirteen (13) in reservation B, in the City of Washington, in the District of Columbia, in their report filed herein more particularly described, to Jonathan B. H. Smith, for the sum of $8,600.
It is, by the court this first day of September, 1885, ordered that the said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 2d day of October, 1885.
Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to said last-mentioned day.
WM. M. MERRICK, A. J.
A true copy. Test; 36 R. J. MEIGS, Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 2d day of September, 1885.
MARY L FORD v. JOHN B. FORD. } No. 9431. Eq. Doc. 24,
On motion of the plaintiff, by Mr. Chas. Maurice Smith, her solicitor, it is ordered that the defendant, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.
By the Court. WM. M. MERRICK, Justice.
True copy. Test: 36 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 1st day of September, 1885.
WILLIAM B VINTON v. ELIZABETH VINTON. } No. 9538.
On motion of the plaintiff, by Mr. W. Preston Williamson, his solicitor, is it ordered that the defendant, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.
By the Court. WM. M. MERRICK, Justice.
A true copy. Test: 36 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Dennis F. Ryon, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 31st day of August next; they may otherwise by law be excluded fram all benefit of the said estate.
Given under my hand this first day of September, 1885.
L. CABELL, WILLIAMSON, Sol'r. 36 GRACE A RYON.

THIS IS TO GIVE NOTICE.
That the subscriber of Cambridge, Maryland, hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Samuel Chase Barney, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 4th day of September next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 4th day of September, 1885.
36 S. CHASE DE KRAFFT

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
In the matter of JOSEPH P. HERMAN, Bankrupt. } No. 303. In Bankruptcy.
Charles Walter, Assignee in this cause, having reported a sale of part of the original lot eight (8) and ten (10) in square five hundred and thirty-five (5·5) situate in the City of Washington, in the District of Columbia, to Abraham Herman, for $400, upon the terms and conditions mentioned in said report:
It is, this 1st day of September, 1885, ordered, adjudged and decreed, that said sale be confirmed unless cause to the contrary be shown on or before the 2d day of October, 1885.
Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said day.
By order of the Court.
A true copy. Test: 36 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. September 5, 1885.
In the matter of the Will of Carl G. Freudenberg, late of Washington, D. C., deceased.
Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Annie K. Freudenberg.
All persons interested are hereby notified to appear in this court on Friday the 25th day of September next, at 11 o'clock, a m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter and The Evening Star previous to the said day.
By the Court. WM M. MERRICK, Justice.
Test: 36 H. J. RAMSDELL, Register of Wills.
F. P. B. SANDS, Solicitor.

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Legal Notices.

THIS IS GIVE NOTICE.

That the subscribers of Bloomsburg, Pa., and the District of Columbia have obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court Business, Letters of Administration on the personal estate of Jane E. Eliot, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscribers on or before the 2d day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 2d day of September, 1885.

36 J. B. ROBISON,
F. W. JONES, Solicitor. H. E. GOODRICH.

THIS IS TO GIVE NOICE

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of James Mason, late of said District, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber, on or before the 1st day of September next; they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 1st day of September, 1885.

JOHN E NORRIS, Solicitor 36 JOHN MASON.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 3d day of September, 1885.

SARAH B. SMITH
v. } No. 9590. Equity.
CLAUDE W. SMITH.

On motion of the plaintiff, by Mr. C. Storrs, her solicitor, it is ordered that the defendant, Claude W. Smith, cause his appearance to be entered herein on or before the first rule day occurring forty days after this day otherwise the cause will be proceeded with as in case of default.

By the Court. WM. M. MERRICK, Justice.
True copy. Test 36 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Holding a Special Term for Orphans' Court Business, September 4th, 1885.

In the matter of the Estate of George Weinandt, late of the District of Columbia, deceased

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by George Viehmann

All persons interested are hereby notified to appear in this court on Friday, the 25th day of September next, at 12 o'clock m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WM. M. MERRICK, Justice.
Test: 36 H. J. RAMSDELL, Register of Wills.
C. A. WALTER, Solicitor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John F. Tucker, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 31st day of July, 1885.

MARY JANIFER DOOLEY,
C. A. WALTER, Solicitor. 35 Administratrix

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Robert M. Reynolds, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 29th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of August, 1885.

35 ORPHA W. REYNOLDS.
FRANKLIN H. MACKEY, Solicitor.

Legal Notices.

THIS IS TO GIVE NOTICE:

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Jeremiah D. Latham, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 29th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of August, 1885.

T. J. LATHAM
35 Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. August 28th 1885

In the matter of the Estate of William Cahill, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament of the said deceased has this day been made by Catharine Deniz, executrix

All persons interested are hereby notified to appear in this court on Friday, the 2d day of October next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WM. M. MERRICK, Justice.
Test: 36 H. J. RAMSDELL, Register of Wills.
BAINBRIDGE H. WEBB, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. August 28th, 1885.

In the matter of the Estate of Henrietta P. Plant, late of the City of Washington, D. C, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration c. t, a. on the Estate of the said deceased has this day been made by George H. Plant.

All persons interested are hereby notified to appear in this court on Friday the 18th day of September next at 11 o'clock, a. m, to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration c. t. a. on the estate of the said deceased should not issue as prayed. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WM. M. MERRICK. Justice.
Test: 35 H J. RAMSDELL, Register of Wills.
CHAPIN BROWN, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. August 21st, 1885.

In the matter of the Estate of McGinnis Sands late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Cornelius W. Johnson, a credeitor, in behalf of Job Barnard.

All persons interested are hereby notified to appear in this court on Friday the 18th day of September next at 11 o'clock, a. m., to show cause why Letters of Administration to said Barnard on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WM. M. MERRICK Justice.
Test: 34 H. J. RAMSDELL, Register of Wills.
EDWARDS & BARNARD, Solicitors.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. August 21st, 1885.

In the matter of the Estate of John Hughes, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by James Hughes.

All persons interested are hereby notified to appear in this Court on Friday, the 11th day of Sept. next, at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WM. M. MERRICK, Justice
Test: 34 H. J. RAMSDELL, Register of Wills,
J. E. MCNALLY, Solicitor.

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Legal Notices.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Frederick J. Seybolt, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of October next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 4th day of October, 1884.
LUCY J. SEYBOLT,
T. A. LAMBERT, Solicitor. 35 Administratrix.

THIS IS TO GIVE NOTICE.
That the subscriber, of Washington D. C., hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Sarah C. Whitney, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of August next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 4th day of August, 1884.
SARAH M. WHITNEY,
HANNA & JOHNSTON, Solicitors. 35 Executrix.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Jane O'Neill, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of June next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 30th day of June, 1884.
his
JOHN ⋈ O'NEILL,
mark
35 Admisintrator.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administrationon the personal estate of Robert Stewart, lateofthe District of Columbia, dec'd,
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of April next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 21st day of April, 1885
his
JOHN STEWART,
mark
ROBT. J. MURRAY, Solicitor. 35 Administrator.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business Letters of Administration on the personal estate of Anne E. Waters, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 20th day of March next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 20th day of March, 1885.
GALENA JOUETT,
FRANCIS MILLER, Solicitor. 35 Administratrix.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Martha A. Lachman, late of the District of Columbia, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 14th day of November, next; they may otherwise by law be excluded from all benefit of the said estate,
Given under my hand this 14th day of November 1884.
ARETAS M. LEGG,
MILLS DEAN, Solicitor. 35 Executor.

Legal Notices.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William H Cross, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 29th day of December next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 29th day of December, 1884.
MARY A. CROSS,
LEMUEL FUGITT, Solicitor. 35 Administratrix.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John P. Ringgold, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of September next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 30th day of September, 1884.
MARY C. RINGGOLD
35 Administratrix.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Lena Reiay late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 12th day of July next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 12th day of July, 1884.
THOMAS ROBINSON,
35 Executor.

THIS IS TO GIVE NOTICE,
That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Eunice C. Young, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of September next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 24th day of September, 884.
WARREN S. YOUNG,
IRVING WILLIAMSON, Solicitor. 35 Executor.

THIS IS TO GIVE NOTICE,
That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration on the personal estate of Caroline Elizabeth Van New Kirk, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of March next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 10th day of March, 1885
BENJAMIN F. EVANS,
E. B. HAY, Solicitor. 35 Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 31st day of July, 1885.
ANDREW J. AVERY
v. } No. 9556.
JULIA A. JOHNSON ET AL
On motion of the plaintiff, by Mr. Irving Williamson, his solicitor, it is ordered that the defendants Julia A. Johnson and William Johnson, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.
By the Court. A. B. HAGNER, Justice.
True copy. Test: 31 R. J. MEIGS, Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 21st day of August, 1885.

SUSAN HOPP v. HOLDEN et al. } No. 9569. Equity.

On motion of the plaintiff, by Mr. John A. Hayward, her solicitor, it is ordered that the defendants, Charles Holden, Nora Holden, Ida Holden, George Holden, Bertha Holden, and Irene Holden, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. WM. M. MERRICK, Justice.
A true copy. Test: 34 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business. August 14th, 1885.

In the matter of the Estate of Emma Hayward, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Matilda Florance.

All persons interested are hereby notified to appear in this court on Friday, the 11th day of September next at 11 o'clock, a. m., to show cause why the said Will should not be proved and admited to Probate and Letters Testamentary on the estate of said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WM. M. MERRICK, Justice.
Test: 33 H. J. RAMSDELL, Register of Wills.
LEON TOBRINER, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. August 14th. 1885

In the matter of the Estate of Jehu W. Elliott, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Mary Elliott.

All persons interested are hereby notified to appear in this court on Friday, the 4th day of Sept. next at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WM. M. MERRICK, Justice.
Test; 33 H. J. RAMSDELL. Register of Wills.
E. W. GRANT, Solicitor.

THIS IS TO GIVE NOTICE,

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testameneary on the personal estate of Mary Clemmer Hudson, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of August, 1885
34 EDMUND HUDSON.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Patrick J. Downing, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 21st day of August. next next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of August, 1885.
E. M. GILLETT, Sol'r. 35 MARGARET J. DOWNING

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 28th day of August, 1885.

LIZZIE J. KELLY v. JOHN L. KELLY. } No. 9584. Eq.

On motion of the plaintiff, by Mr. Leon Tobriner, her solicitor., it is ordered that the defendant, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. WM. M. MERRICK, Justice
True copy. Test: 35 R. J. MEIGS, Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. August 21st, 1885.

In the case of Sarah E. Trammel, Administratrix of Virginia Johnson, dec'd, the Administratrix aforesaid has, with the approval of the court, appointed Friday, the 18th day of September, A. D. 1885, at 11 o'clock a. m, for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administratrix will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 34 H. J. RAMSDELL, Register of Wills.
CARUSI & MILLER, Solicitors.

THIS IS TO GIVE NOTICE.

That the subscriber, of Washington, D. C., has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Elizabeth S. Carter, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of August next; they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 14th day of August, 1885.
34 CHARLES E, CARTER,
J. W. DOUGLASS, Solicitor. Executor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 18th day of August, 1885.

MARY G. SMOOT v. BENJAMIN S. SMOOT. } No 9576. Equity.

Application for divorce on the ground of desertion.

On motion of the plaintiff, by Mr. H. Randall Webb, her solicitor, it is ordered that the defendant, Benjamin S. Smoot, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be preceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 34 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscribers of the District of Columbia have obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Eleanor Miller, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscribers on or before the 21st day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 21st day of August, 1885.
CHARLES MILLER
34 HORATIO BROWNING.
EDWARDS & BARNARD, Solicitors.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William J. McCollam late of the District of Columbia, deceased

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 21st day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of August, 1885.
JNO. J. McCOLLAM,
A. A. BROOKE, Solicitor. *34 Administrator.

THIS IS TO GIVE NOTICE.

That the subscriber of Washington, D. C, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Nathan Blum, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of August, 1885.
DAVID BLUM,
LEON TOBRINER, Solicitor. 33 Administrator.

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Washington Law Reporter

WASHINGTON - - - - - - September 12, 1885.

GEORGE B. CORKHILL - - - EDITOR

AN interesting case bearing on the general question of privity in tort is that of Bishop v. Weber (Mass., 1885; 1 Eastern Rep., 71), where it was held that one who holds himself out to the public as a caterer is liable to one who is injured by partaking of unwholesome and poisonous food and drink prepared and furnished by him, irrespective of any question of privity of contract; and it is unnecessary to aver that defendant knew of its injurious quality.

It was objected on demurrer that the declaration did not allege a relation or breach of relation on which an action would lie, nor any wrongful act or omission of duty, nor knowledge of defects on defendant's part.

The court sustained the declaration on the broad ground above stated, saying the liability does not rest so much upon an implied contract as upon a violated or neglected duty voluntarily assumed. Indeed, where the guests are entertained without pay, it would be hard to establish an implied contract with each individual. The duty, however, arises from the relation of the caterer to his guests. The latter have a right to assume that he will furnish for their consumption provisions which are not unwholesome or injurious through any neglect on his part. The furnishing of provisions which endanger human life or health stands clearly upon the same ground as the administering of improper medicines, from which a liability springs, irrespective of any question of privity of contract between the parties.

IN Chicago & Milwaukee Ry. Co v. Ross, U. S. S. C. 19 Rep., the plaintiff was engineer of a freight train which collided with a gravel train, by reason of the failure of the conductor of the freight train to give him information of the coming of the gravel train. The conductor had the necessary information in time to deliver it, as it was his duty to do so by express regulation to the plaintiff, and his failure so to deliver it was due to his own negligence. Plaintiff sustained damage by reason of this negligence. Held, that defendant company, employer of the engineer and conductor, was liable.

IN actions for malicious prosecution the Supreme Court of Pennsylvania, in Gilliford v. Windel, January 5, 1885, Gordon, J., lays down the following rule: An action for malicious prosecution can be maintained only where the plaintiff can make it appear, first, that the defendant, in his attempted prosecution, had no probable cause upon which to found it; and, second, that he was actuated by malice. If the defendant is able to show probable cause, that is sufficient for his protection, and in that case his motive for the prosecution is not to be considered. If there be no such cause shown, then the question is one of malice, and if the proofs exhibit an absence of this essential element of the plaintiff's case, the action cannot be legally sustained.

THE law which tests all things, and is skeptical about success long after enthusiasts are confident, has recently held that silos, although they may be regarded as buildings, "cannot be deemed improvements" within the rule that a tenant for life may be allowed for permanent and valuable improvements.

Cotton, L. J. says: The result of the use of silos cannot be a certainty. They are at present experimental; they may turn out a great success, and they may turn out a failure; there are divided opinions about them. The report of one of the surveyors puts the work very hypothetically as an advantage to the estate; and the court ought not to act on speculation, but to consider whether, having regard to present experience and knowledge, it can reasonably be said the silos certainly will be successful in agriculture. It is impossible at present to say that with certainty.

Lindley, L. J., added: If a country gentleman likes to experiment with silos, he must pay for them out of his own

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pocket. We should be very wary with regard to them, and I also doubt whether we should be right if we were to give retrospective sanction to payments in such a case as this, and in this opinion Fry, L. J., concurred.

Circuit Court District of Oregon.

UNITED STATES *vs.* ADAMS ET AL.

1. *Liability of a Surety.*—The liability of a surety in an official bond is *stricti juris*; and he is not to be held responsible for the conduct of his principal beyond the scope of his undertaking, reasonably construed.
2. *Assistant Secretary of the Treasury: Authority of.*—The Assistant Secretary of the Treasury is not the deputy of the Secretary, but only his aid, and his acts are not valid unless specially authorized by law or prescribed by the Secretary. Secs. 161, 245 R. S.; but a letter written by him to a collector of customs concerning the deposit of money in his custody, will be presumed to have been written by authority of the Secretary until the contrary appears.
3. *Case in Judgment.*—In 1866, A was collector of customs at Astoria, Oregon, when and where he received a letter signed by the Assistant Secretary of the Treasury, directing him to take forty-six thousand five hundred dollars in gold coin, theretofore received by him in payment of duties, and then in his custody, to San Francisco, and deposit the same with the assistant treasurer; in pursuance of which direction the collector sailed for San Francisco on the current steamer with said money in his trunk, and on the way twenty thousand dollars of the same was stolen therefrom without any want of ordinary care and diligence on his part, a portion of which was afterward recovered, so as to reduce the loss to twelve thousand six hundred and ninety-six dollars and twenty-eight cents, for which the government sued the collector and his sureties on their bond; the defendants pleaded these facts in defence and claimed they were not liable on the bond, to which the plaintiff demurred. *Held* (1), That the carriage of this money to San Francisco was no part of the duty of A as collector. Sec. 3,639, R. S.; and therefore his sureties are not responsible for his conduct while so engaged; and (2) that in the transportation of said money, A was simply acting as a private carrier for the government and is not liable on his bond for his conduct, or otherwise, except for the want of ordinary care and diligence.

Action on the bond of collector of customs. The opinion states the facts.

DEADY, J. This action is brought by the United States to recover of the defendants the sum of twelve thousand six hundred and ninety-six dollars and twenty-eight cents, with interest at six per centum per annum from September 18, 1873.

The complaint alleges that in 1865 the defendant William L. Adams was appointed collector of customs for the district of Oregon, and that on September 15th of said year, he, together with the defendants Charles L. Parker and Preston W. Gillette, as his sureties, executed their bond to the plaintiff in the penal sum of fifty thousand dollars, conditioned as follows: "That the said Adams has truly and faithfully executed and discharged, and shall continue truly and faithfully to execute and discharge, all the duties of said office according to law;" that said Adams failed to keep the condition of said bond, in this, that of the moneys received by him as collector aforesaid, he failed and refused to pay over to the proper officers of the Treasury Department the sum of twelve thousand six hundred and ninety-six dollars and twenty-eight cents.

The answer of the defendants contains a specific denial of the material allegations of the complaint, except the execution of the bond, and two special pleas or defences as follows:

1. That on and prior to February 3, 1866, the defendant Adams, as collector of customs at the port of "Astoria," Oregon, had in his custody forty-six thousand five hundred dollars in gold coin and one thousand dollars in currency, belonging to the plaintiff; that, a short time prior to said date, said Adams had received instructions from the Treasury Department, through the Assistant Secretary thereof, "to deposit said moneys with the assistant treasurer of the United States at San Francisco," California, with advice that only the actual expenses incurred "in making the deposit and returning to Astoria would be allowed him;" that, in obedience to said instructions, said Adams, on February 3, 1866, sailed from Astoria, with said money, on the steamship Oregon, for San Francisco, with the intention of personally depositing the same, as directed by the Department; that said money was secured by said Adams on board the said vessel "in the best manner he was able to provide, and carefully watched and guarded by him, as much as he was able to do, during the voyage to San Francisco," but that, about February 6, while off the coast of California, twenty thousand five hundred dollars of said gold coin was stolen from the trunk in which it was deposited by some of the servants employed on said vessel, "during the temporary and necessary absence of said Adams from his room in which said trunk was kept, and without any fault, negligence or carelessness on his part;" that all of said money was afterwards recovered from the thieves and paid into the Treasury of the United States, except the sum of twelve thousand six hundred and ninety-six dollars and twenty-eight cents, which is the money sought to be recovered by this action.

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2. That said Adams, on February 3 aforesaid, had in his possession, as collector of customs aforesaid, the money of the United States aforesaid, at Astoria, when and where he received instructions from the proper officer of the Treasury, as aforesaid, to receive and carry said moneys, "as a special carrier" from the custom house in Astoria, to the assistant treasurer in San Francisco, which he then and there undertook to do as aforesaid; "that as such carrier said Adams used all proper precautions to safely keep the said moneys so entrusted to him," and that "the passage by steamer was the easiest and safest way of traveling with money from Astoria to San Francisco;" that, on the passage, twenty thousand five hundred dollars of said gold coin was stolen from said Adams as aforesaid, "without any fault, negligence or carelessness" on his part; that said Adams was not authorized to employ any person to assist him in transporting said money, and received no compensation therefor except his necessary expenses from Astoria to San Francisco and return to Astoria; and that through the efforts of said Adams all the money so stolen was recovered and paid to the proper officers of the United States, except the sum of twelve thousand six hundred and ninety-six dollars and twenty-eight cents for which this action is brought.

To these two pleas the United States demurs, for that the facts stated therein do not constitute a defence to the action.

The argument in support of these pleas is this: first, the defendant Adams, in transporting this money to San Francisco, was not acting as collector of customs at Astoria or in the district of Oregon, but as a special or private carrier at the request of the Treasury Department. and that, as said carrier or bailee, he was only bound to the exercise of ordinary care and diligence, and is, therefore, not responsible for a loss by larceny that occurred, notwithstanding the use of such care and diligence; and second, although it should be held that Adams is liable for such loss either as a common carrier or collector, still he was not then engaged in the performance of a duty within the obligation of his bond, or the purview of the statute regulating his duties thereunder, and, therefore, the sureties in such bond are not liable thereon for such loss.

The argument in support of the demurrer is, first, that the Assistant Secretary of the Treasury had no authority to direct the defendant Adams to transport this money to San Francisco, and therefore, when he removed it from the custom house and undertook to carry it to that place, he did so in his own wrong, and contrary to the condition of his bond; but if the Assistant had such authority, then said Adams, in obeying his instruction, was acting as collector, and in either case he and his sureties are liable on their bond for the loss accordingly, for the law is well settled that a larceny or robbery will not excuse the parties to a collector's bond for a failure to pay over all money that may have come into his hands as such collector. Citing United States v. Prescott, 3 How., 578; United States v. Morgan, 11 How., 154; United States v. Dashiel, 4 Wall., 182; Boyden v. United States, 13 Wall., 17.

By sections 1 and 2 of the act of September 2, 1789, 1 Stat., 65; sections 233–34, R. S.; organizing the Treasury Department, the Secretary of the Treasury was authorized to appoint an Assistant Secretary; and by section 13 of the act of March 3, 1849, 9 Stat., 396; sec. 245, R. S.; the provision for the appointment of such assistant was repeated with a specification of certain powers and duties, and concluding as follows: "who shall perform all such other duties in the office of the Secretary of the Treasury, now performed by some of his clerks, as may be devolved on him by the Secretary of the Treasury."

By section 5 of the act of March 3, 1857, 11 Stat., 220; the appointment of the Assistant Secretary was given to the President; and by section 3 of the act of March 14, 1864, 13 Stat., 26, it was further provided that "an additional Assistant Secretary of the Treasury" should be appointed by the President, "who shall perform all such duties in the office of the Secretary of the Treasury, belonging to that Department, as shall be prescribed by the Secretary of the Treasury, or as may be required by law."

An "assistant" is one who stands by and helps or aids another. He is not a deputy, and cannot, therefore. act in the name of and for the person he assists, but only with him and under his direction, unless otherwise expressly provided by law. It is a question whether an Assistant Secretary, appointed under the act of 1849, could be even authorized by the Secretary to do anything in his Department, except such acts or duties as were performed at the passage of such act by some of the Secretary's clerks. But no such restraint is imposed on the power of the Secretary as to the assistant authorized by the act of 1864. Any duty pertaining to his office which the Secretary may prescribe for him, such assistant may do; and it is highly probable that in practice the same rule was followed as to the first assistant. Besides, it

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is hardly to be doubted that in 1849 some clerk in the Treasury Department was performing the duty of directing collectors as to the disposition of public money in their hands.

But I think that an act done by the Assistant, and within the authority and power of the Department, must, until the contrary appears, be presumed to have been done under the direction of the Secretary of the Treasury. In U. S. v. Tichenor, 8 Saw., 152, this court said that where the President was authorized to reserve land for certain military purposes, the action of the Secretary of War, to whose Department the subject belonged and the duty pertained, would be presumed, in the absence of evidence to the contrary, to have been authorized by the President.

For the purpose, then, of this case, it must be presumed that the Assistant Secretary was acting in pursuance of the direction of the Secretary, when he required the defendant Adams to take this money to San Francisco and deposit it with the assistant treasurer at that place.

By section 15 of the act of August 6, 1846, 9 Stat., 62–3, sec. 3616, R. S., persons having public money of the United States, and not included in the directions contained in section 9 of said act, sec. 3615, R. S., as was not the collector of the district of Oregon, might pay the same to the treasurer or assistant treasurer of the United States or such other depositary, constituted in pursuance of the law, as the Secretary of the Treasury might designate; and by section 6 of said act, sec. 3639, R. S., all public officers, including collectors of customs, "are required to keep safely, without loaning, using, depositing in banks, or exchanging for other funds than as allowed by this act, all the public money collected by them, or otherwise at any time placed in their possession and custody, till the same is ordered by the proper department or officer of the Government to be transferred or paid out; and when such orders for transfer or payment are received, faithfully and promptly to make the same as directed, and to do and perform all other duties as fiscal agents of the Government which may be imposed by this or any other act of Congress, or by any regulation of the Treasury Department made in conformity of law."

Admitting that the order of the Assistant Secretary was given under the direction of the Secretary, and also that the latter had the authority to direct or employ the defendant Adams, to carry this money to San Francisco, the sureties maintain it was a duty or service, for the discharge or conduct of which they were in no way bound. The undertaking of the defendant Adams, as collector, is stated in the condition of his bond as follows: "To truly and faithfully execute and discharge all the duties of his office according to law;" which duties were, according to section 6 of the act of 1846, *supra*, "to keep safely . . . all the public money collected by him" till the same was duly ordered "to be transferred or paid out;" and "faithfully and promptly" make such transfer or payment when required.

There is no provision here looking to the collector being engaged in the transportation or carriage of public money from one State or district to another for a distance of six or seven hundred miles.

It may be, and probably is, the duty of a collector, under this section, to transfer the public money in his possession when so ordered, by depositing the same with a depositary in the town or place where his office is situated, or its immediate vicinity, and that his sureties are liable for any loss that may occur while he is so engaged, from either a larceny or robbery. To safely keep the public money under these circumstances may be a part of the collector's duty to faithfully "transfer" the same when required, and if so, the undertaking of the sureties makes them responsible for its faithful performance. But I doubt very much whether the duty of a collector "to transfer" public money in his possession, when required, includes the carrying or transportation of such money to any point beyond the vicinity of the custom house, even in his own district, as from Astoria to Portland.

The transfer and transportation of money from hand to hand and place to place are business transactions, and parties who undertake for a collector as sureties expect, and have a right to expect, that when the Government engages in any such transaction, with reference to the money in the possession of their principal, it will do so in a business way and according to business methods.

At the time of this transaction, as well as before and since, the usual method on this coast of transmitting any quantity of coin was by express; and that is the way this money should have been sent to San Francisco. Assuming that there was no designated depositary in Oregon at the time, the collector should have been instructed to transfer the amount to Wells, Fargo & Co. at Astoria, for transportation to San Francisco, who then would have been responsible for its safe delivery at the latter place. No business man in Portland would have thought of sending a clerk or messenger to San Francisco

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with forty thousand dollars in coin, or the tenth part of it; and the Assistant Secretary who directed it to be done in this case, unless he did so on the advice of the collector, is the primary cause of this loss and morally responsible for it.

The improvidence of this order appears to have soon become known to the Department, for it was stated and admitted on the argument of the demurrer that, within a day or two after the collector had left for San Francisco, a counter command was received at his office directing him to send the money by Wells, Fargo & Co.

The law is well established that the liability of a surety is *stricti juris*; and, therefore, he is not to be held responsible for the conduct of his principal beyond the scope of his undertaking, reasonably construed. But the rights and interests of the public, to whom the surety has voluntarily become bound for the conduct of his principal, are not to be overlooked in the consideration of the matter, and, therefore, courts ought not to be astute or alert, as they sometimes appear to have been, to raise doubts and start quibbles, to save a surety from the otherwise legal consequence of his undertaking. Yet there is nothing in the nature or purpose of his undertaking that should make him liable beyond the fair and reasonable construction of its terms and the provisions of law relating thereto, considered in the light of the surrounding circumstances and with reference to the object of the transaction. U. S. v. Cheesman, 3 Saw., 429, and cases there cited. Nor do the words of the statute, section 3639, Revised Statutes, to the effect that the collector shall "do and perform all other duties as fiscal agent of the Government" prescribed by law, include the duty of acting as agent for the transportation of this money, without some law directly imposing such duty on him or authorizing the Secretary to do so in his discretion. This section, it must be noticed, includes assistant treasurers, receivers and all other custodians of public money, and the provision in question must be construed in each case with reference to the nature of the office and the duties primarily and ordinarily pertaining thereto. An assistant treasurer might very properly be required to receive, keep and pay out public money in any quantity and from any source, but not to act as a collector of revenue, either under the excise or tariff laws. Nor can a collector of customs be legally charged with the duty and his sureties with the responsibility of receiving, keeping and paying out sums of money not collected by him as duties on imports. And even if this could be done, it would require a still more expanded construction of the provisions to require a collector to act as a carrier of public money at the risk of his sureties.

In U. S. v. Singer, 15 Wall., 122, Mr. Justice Field says: "The official bond of parties undoubtedly covers not merely duties imposed by existing law, but duties belonging to, and naturally connected with, their office or business, imposed by subsequent law. But the new duties should have some relation to or connection with such office or business, and not be disconnected from and foreign to both." And in U. S. v. Cheesman, *supra*, 431, Mr. Justice Sawyer, in considering the effect of this very provision, says: "We think these words only intended to include such duties as naturally and ordinarily belong to the particular officer giving the bond, or have some obvious relation to such duties, and such as the sureties acquainted with the duties of the various public officers, as usually devolved on them by law, might reasonably be expected to contemplate at the time of executing the bond, as likely to be imposed upon their principal in case the exigencies of the Government should require it; and not those duties which are usually imposed upon, and more appropriately belong to, and entirely different class of officers."

Neither is the defendant Adams liable on his bond as collector for this loss, if at all. In carrying this money to San Francisco, he was acting not as collector, but as a carrier for the Department. In contemplation of law, collector Adams delivered—transferred—this money to carrier Adams at Astoria, and thereafter his duty and responsibility concerning it as collector ceased and that as carrier began. His liability as carrier does not arise on his bond as collector, nor is it measured by his duty as such. But his liability arises upon the obligation which the law imposes on him as a carrier. If he was a common carrier—a person undertaking for hire, to carry the treasure or goods of all persons indifferently—he would be responsible for the loss, although it was the result of a larceny. A common carrier is an insurer of the safe delivery of the goods committed to his care, unless the loss is caused by the act of God or the public enemy. Orange Bank v. Brown, 3 Wend., 162; Lawson's Con. of Car., secs. 1, 3; Story on Con., sec. 920; Story on Bailments, sec. 496.

But Adams was not engaged in the business of a common carrier, nor acting as such. He did not hold himself out as a person engaged in the business of carrying treasure or anything else. He only undertook, at the re-

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quest of the Department, to carry this particular money, in consideration of receiving his actual expenses while so engaged, without any deduction of his salary during his absence from his office. He was, therefore, a private carrier, and responsible only as an ordinary bailee for hire, namely, for ordinary care and diligence; which, in this case, is alleged to have been duly bestowed on the undertaking. Story on Con., 920; Story on Bailments, sec. 457; Allen v. Sackrider, 37 N. Y., 341.

Upon the facts stated in these two defences, neither the principal nor his sureties in this bond are liable for this loss, and the demurrer thereto must be overruled.—*West Coast Reporter.*

Supreme Court New York.

NELSON, Executor *vs.* TENNEY, Assignee.

1. *Right of Surviving Partner to make a General Assignment.*—A surviving partner has no power, without the consent and concurrence of the representatives of the deceased partner, to make an assignment to a trustee for the benefit of creditors of the firm, and to create preferences among the creditors by such an assignment. *Quere.* "Whether it could be done with such assent or whether an assignment is valid as between the creditors of the firm and such surviving partner?"
2. In case of such an assignment a court of equity will interfere and appoint a receiver to close up the business of the co-partnership.

DAVIS, P. J.—This action is brought by Alfred Nelson, as executor of the last will and testament of Franz Oscar Ericson, to set aside an assignment with preferences made by Alexander D. Findlay to the appellant, Tenney. Findlay and Ericson were co-partners, carrying on the business of tailors in the city of New York, under certain articles of partnership, a copy of which is annexed to the complaint. On the 22d of June, 1884, Ericson died, leaving Findlay him surviving, and leaving a last will and testament which nominated the plaintiff, Alfred Nelson, as executor, and which was subsequently probated, and letters testamentary thereon were duly issued to the plaintiff. Findlay, as surviving partner, continued in possession of the store and the stock in trade, and managed and carried on the business for the purpose of disposing of the stock and collecting the debts owing to the firm until the 20th day of August, 1884, at which time he made an assignment to the appellant, Tenney, without consultation with the executor and without his consent. The assignment prefers two creditors of the firm in the sum of about $4,500 and directs that after their payment the surplus in hand be applied to the payment of the other debts of the firm ratably to their several amounts. The appellant accepted the trusts of the assignment and took possession of the property. The appellant demurred to the complaint, and the order appealed from was made upon the pleadings and upon affidavit.

Two questions have been argued on this appeal. First, whether the surviving partner of a firm has power to make an assignment of the firm's assets to a trustee, creating preferences among the creditors, and, secondly, whether the executor or administrator of a deceased parter can maintain an action to set aside such an assignment.

As to the first of these questions, we are of opinion, upon a careful examination of the authorities, that a surviving partner has no power without the consent and concurrence of the representatives of the deceased partner to make an assignment to a trustee for the benefit of the creditors of the firm, and to create preferences among the creditors by such an assignment. Whether it can be done with such assent is a question not now before us. It is undoubtedly true that a surviving partner takes by virtue of his title as partner the assets of the firm with authority, for the purpose of closing up the affairs of the partnership, to sell and dispose of or collect the same and convert them into money and apply the same in payment of the partnership debts. Collyer on Partnership, secs. 123–129; 3 Kent, 37; 1 Parsons on Contracts, 183; Story on Partnership, sec. 346; and in doing this he has the right in the exercise of his discretion to pay the debts of the firm in full or in part in such order as he shall deem just and equitable, although his doing so may operate to give preference to the creditors whom he thus pays. That this is the law must be regarded as settled in this State by Loeschigk v. Hadfield, 51 N. Y., 660, reported below; 5 Robt., 26; 19 Abb. Pr., 169; and Cushman v. Addison, 52 N. Y., 628.

In doing this he is acting in pursuance of the authority existing in him as surviving partner. He is liable, both as surviving parner and individually, for all the partnership debts, and his right to the possession and control of the property for the purpose of paying and extinguishing the co-partnership debts entitles him to the exercise of his own discretion in the application of the assets or other proceeds for that purpose. Egbert v. Wood, 3 Paige, 517. He is no more a trustee in any strict sense of that term for the creditors of the firm than is any other debtor for his creditors, and their remedies against him in the collection of the debts of the firm are precisely the same as those which existed

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against the firm prior to its dissolution by the death of one of its members. But as between him and the representatives of the deceased partner, a clear and well defined trust exists which devolves upon him the duties and obligations in respect of assets the disposition and application of the firm and their proceeds which equity recognizes, and when abused or evaded will interpose to enforce. The duties of that trust are not such that they cannot be performed by agents, servants or attorneys acting under his control or direction. He may, therefore, employ clerks and attorneys and authorize them to act for him and on his behalf in performing those duties, precisely as the firm might have done for the purpose of closing its affairs.

But it is a very different question whether he can, by an assignment of the property of the firm, transfer the trust to another trustee in the manner attempted to be done in this case, imposing upon that trustee duties which operate as preferences among the creditors of the firm, and over which the surviving partner has no control. Such an act is an entire abnegation of the duties of the trust existing between himself and the representatives of the deceased partner, and if it be attempted to be done without the consent of such representatives, equity will, we think, step in to prevent the consummation of the attempt, and take possession of the property, through its receiver, for the purpose of distribution among the creditors in such manner as shall be just and equitable. The plaintiff in this case is the sole representative of the deceased partner, as executor of his last will and testament. He shows that the assignment by the surviving partner was made without consultation with him, and without his knowledge or assent; and that he has transferred the entire remaining assets of the firm to the appellant and thereby sought to transfer to him the duties of the trust existing between the surviving partner and the executor. In such a case we think a court of equity has a clear right to intervene, and by the appointment of a receiver proceed to close up the business of the co-partnership and discharge its duties in such manner as will protect the rights of the legal representatives of the deceased partner. This must be the result, we think, springing out of the general rule as laid down by Mr. Justice Story in Story on Partnership, sec. 344, where he says, after speaking of the general powers of receivers: "However, if there be any danger of abuse or positive misapplication of funds by the surviving partner, a court of equity will interpose and restrain it by injunction and even appoint a receiver upon the application of the representatives of the deceased."

The surviving partner being a trustee for the settlement of the estate as between himself and the personal representatives of the deceased partner cannot pass his whole duty over to another trustee without the consent of such representatives, and the attempt to do that is, in our judgment, such an abuse of his powers and duties as justifies the representatives of the deceased partner in applying to a court of equity to take possession of the estate by a receiver. It is an attempt to escape from his obligation as a trustee for such personal representatives.

In disposing of this appeal we are not called upon and therefore do not pass upon the question whether such an assignment is valid as between the surviving partner and the creditors of the firm. That question depends upon other principles, and besides no such creditor is a party to this action and the plaintiff does not represent such creditors. We think, however, enough was shown in this case to justify the court below in making the order appealed from appointing a receiver, and therefore the order should be affirmed, with the usual costs to abide the event of the suit.

Supreme Court California.

DE LAURENCEL ET AL. *vs.* DE BOOM.

Estate of Deceased Persons: Devise to Relations as a Class.—The testator, a naturalized citizen of the United States, died domiciled in France. The next of kin him surviving, were three De Laurencels, children of a deceased sister, and five De Booms, children of a deceased brother. All his property was devised in trust for certain specified purposes, with a direction that after the expiration of ten years the same was to go to the DeBooms and De Laurencels. In the instructions to the trustee, he directed that at that time he should "disclose to all my heirs, the De Booms as well as the De Laurencels, the state of my succession." *Held*, that the devise was to the De Booms and De Laurencels, as a class, and that they were entitled to share equally.

Appeal from an order of the superior court of the city and county of San Francisco, denying the plaintiffs a new trial. The opinion states the facts.

MYRICK, J. Jean Corneille de Boom was a naturalized citizen of the United States. He died in 1870, domiciled in France. His next of kin surviving him were three De Laurencels, children of a deceased sister, and five De Booms, children of a deceased brother. He left some property in France, but the bulk of his property was in this State, consisting of real and personal estate. By the will of the deceased, which has been probated and

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the property distributed accordingly, all his property was devised to his nephew, Romain Camille de Boom, in trust for certain specified purposes, with a direction that after the expiration of ten years, the same was to go to the De Booms and De Laurencels. In what proportion, is the question before us. It is contended on behalf of the De Laurencels, that the nephews and nieces are to take as by right of representation according to the law of France, giving to them one-half the property, the other half going to the De Booms; while it is contended on behalf of the De Booms that the property is to be divided in equal proportions among all. The court below decreed in accordance with the latter proposition.

The instructions left by the deceased for the guidance of the trustee contain the following clause: After ten years of administration, and after having settled with the greater portion of the creditors, you will raise money enough to pay the balance in full. At that time you shall also disclose to all my heirs, the De Booms as well as the De Laurencels, the state of my succession, and the manner in which you intend, either immediately or later, to place them in possession, each for what comes to him; and, if you do not elect a distribution of my succession at the expiration of ten years after my death, after a settlement with the creditors, you will account to and pay over to each of my heirs the revenues as you receive them. Confiding in your fidelity, I leave it to you to distribute either the whole or a part of the capital of my estate among my heirs, or the revenues only, during twenty years from the date of my death.

In cases of intestacy, there can be no doubt of the proposition, as to real property, that the law of its situation will control. Story on Conflict, section 474, and note. In general, it is held, as to personal property, that the law of the domicile will control, unless there be a local law directing otherwise. But the decedent did not die intestate; he left a will, with instructions, under which will and instructions the trustee holds the property. We must, therefore, look at the will and instructions, holding them, as it were, by the four corners, to see if we can ascertain his intentions. He made "all my heirs, the De Booms as well as the Laurencels," the recipients of the proposed bounty. We are of opinion that, when the testator said his property was to go to all his heirs, the De Booms as well as the Laurencels, he did not mean in the proportions directed by the law of his domicil, nor according to the law of succession in this State in cases of intestacy, but he said, in effect, "the De Booms and Laurencels are my heirs, and I wish them to have my bounty." The words "all my heirs" are not to be taken in this case solely as meaning those who take in case of intestacy, but are to be considered in their relation to the words "the De Booms as well as the Laurencels." The testator did not mean that all persons named De Broom or Laurencel should take; but that the persons of either name who stood in an inheritable relation to him should take. Both families did stand in that relation, and so standing and being thus grouped, the principle comes in that where a class is named as devisees, all of that class shall share, and shall share equally. In this view, we think the language used by the testator is clear, and expressed the intention that the relatives named in the record shall take equally.

Order affirmed.

Circuit Court District of Colorado.

PITTINGER
vs.
PROVIDENCE WASHINGTON INSURANCE CO.

Action on Insurance Policy: Breach of Conditions Must be Specially Plead.—In an action on an insurance policy, the defendant, if he relies upon a breach of some particular condition of the policy, must specially plead it. Evidence thereof is inadmissible under a general denial that the plaintiff had performed all the conditions on his part.

Action on a policy of insurance. The opinion states the facts.

HALLETT, J. Mr. George W. Pittinger brought an action against the Providence Washington Insurance Company on a policy of insurance. He alleged, in general terms, that he fulfilled the conditions of the policy; I believe, set out the policy also. The defendant answered, in the like general terms, that he did not observe the conditions of the policy. "Defendant, further answering, denies that on the first day of November, 1883, or at any other time, said Atkinson gave notice of proof of loss, as provided in said policy, and denies that said Atkinson performed all and singular the conditions of said policy on his part to be performed."

At the trial, the defendant contended that upon this state of the pleadings the plaintiff was bound to prove affirmatively that he had fulfilled and executed all the terms of the policy, and if that was not true, that the defendant was at liberty to offer evidence to the point that some of the conditions had not been fulfilled, as that the property was allowed to remain vacant and unoccupied for some time, and that it was not kept in operation, the

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property being a mill and furnace and the like; that no watchman was kept on the premises, as required by the terms of the policy, and, perhaps, some other things of the same character. This evidence was excluded, on the ground that such defence must be pleaded specially. The question has been argued on motion for new trial, and I see no reason to reverse the ruling which was made at the trial. It is laid down in the books that it is not necessary to set forth in the complaint a condition subsequent, and that a defendant relying upon it must plead it. This is true under systems of pleading which admit of more general defences than ours. Under the code of this State, it is provided that the answer shall be special. No doubt is entertained that this requires a specific denial to each allegation in the complaint, and if it be said that the plaintiff has declared only generally, there is some doubt upon that, inasmuch as he has set forth the policy in his complaint; and if the defendant accepted that method of declaring, he was still bound to plead his defence specially. In section 586, May on Insurance, the rule is so laid down. I think there can be no doubt as to its correctness. It would be extraordinary if a plaintiff coming into court with one of these policies of insurance should be bound to have witnesses to everything that is set down in the policy, to prove everything which may be set up as a defence. I say that would be most remarkable, and nobody would have greater reason to complain of it than the insurance company itself, because, if plaintiff should be fortified in all points with an extraordinary number of witnesses, the cost would be very great.

The rule is, that, in respect to all such matters, the insurance company must plead its defence specially, in order that it may put the matter in issue.

The motion for new trial will be denied, and judgment on the verdict.—*West Coast Reporter.*

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1. *Negotiable Instruments: Joint Maker; Endorsement before Delivery to Payee.*—An endorser of a negotiable promissory note before delivery to the payee is liable as a joint maker, and the note with the endorsement is *prima facie* evidence of such obligation.

2. *Ibid: Ibid; Federal Courts.*—The Federal courts will construe this question as one of commercial law, and the State decisions will not be followed. [First Nat. Bank of Worcester v. Lock Stitch Fence Co.; Central Nat. Bank v. Same, U. S. C. C., N. D. Ill., May, 1885.]

The New English Lord Chancellor.

On Thursday, the 25th of June, before the Court of Appeal and the judges of the chancery division, Sir Hardinge Stanley Giffard took the oath and assumed the dignities of Lord High Chancellor of England. Of all the positions which are open to the subjects of this kingdom, there is none surrounded with more magnificent traditions, and none more imposing in present weight and grandeur than that of Lord High Chancellor. The second officer of the crown and the first of Her Majesty's lay subjects, he is both the keeper of the queen's conscience and the actual guardian of the great seal—the "*clavis regni,*" or instrument by which alone on solemn occasions the will of the sovereign can be expressed. His position on state occasions, when a peer, is on the immediate left of the throne and at the head of the duke's bench. He is, of right, patron of all the king's livings of the value of £20 and under, and he is visitor of all colleges and hospitals of royal foundation. He is guardian of all wards in chancery, and of all infants who may desire his protection. Judicially he is president of the highest appellate tribunal of the United Kingdom, while in him is also vested the peculiar right to judge "according to conscience and equity" whenever, in his discretion, the law may possibly work injustice to a subject. He alone has also the right to issue a writ of *habeas corpus* during the legal vacation. In criminal matters he is required to attend only the trial of peers and the hearing of an impeachment. Historically the origin of this office is almost lost in antiquity, but as long as there have been kings in England so long have there been lord chancellors. That King Arthur had a chancellor is certain, while, in 1067, we find the name of William the Conqueror's first chancellor duly recorded and the dignities of his position enumerated. The name itself appears to originate in the right, then and now inherent in a chancellor, of "cancelling" the king's letters patent when wrong in form or contrary to law. As the English nation has grown great and rich, so the position of the first lay subject has increased in importance—sometimes occupied by a primate, dreaded and disliked, with interests antagonistic to the crown—often exciting, like Wolsey, by the magnificence of his retinue and the pomp of his life, the personal envy of his sovereign—always standing forth to the world as the most prominent among English subjects. Later, and until the time of Clarendon, the chancellor was habitually the prime minister of the country; whereas now his legal functions are naturally of para-

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mount importance, and habitually serve to keep him, in great measure, from leading an active political life. Suffice it to add, that the emoluments of the office are commensurate with its importance. The man who has succeeded to the dignities and duties of this position was born in 1825, and is the son of the celebrated Dr. Giffard, barrister at law and journalist, a man whose marvelous command of the English language, and whose biting sarcasm rendered him one of the most dreaded and the most powerful men of his time. Educated at Merton College, Oxford, Sir Hardinge graduated B. A. in 1852 and M. A. in 1855, and was called to the bar as a member of the Inner Temple in 1850. He then joined the South Wales circuit, on which he soon acquired a practice, and in 1865 obtained a silk gown. In November, 1875, he was appointed solicitor general, on the elevation of the then attorney general, Sir Richard Baggallay, to the Court of Appeal, and the subsequent appointment of Sir John Holker as attorney general. In March, 1877, he was returned to Parliament for Launceston, and at the general election of 1880 he retained that seat. Previously he had unsuccessfully contested Cardiff in November, 1868, again in February, 1874, and had also had a like experience at Horsham in 1876. During a career of thirty-five years at the bar he has enjoyed an ever increasing practice, and his name is associated with most of the important trials of our day. Strictly conscientious in the discharge of his duties, always courteous, always kindly, and with a keen sense of the dignity and responsibilities of his profession, Sir Hardinge Giffard carries with him to the woolsack the heartfelt affection and respect, not only of his personal friends, but of every branch of English lawyers.—*London Law Times.*

Dangerous Dogs.

In 1 Hale's Pleas of the Crown, p. 430, the law is thus concisely stated: "If a man have a beast, as a bull, cow, horse or dog, used to hurt people, if the owner know not of his quality, he is not punishable. But if the owner have notice of the quality of his beast, and it doth anybody hurt, he is chargeable with an action for it. Though he have no particular notice that he did any such thing before, yet if it be a beast that is *feræ naturæ*, as a lion, a bear, a wolf, yea an ape or monkey, if he get loose and do harm to any person, the owner is liable to an action for the damage, and so I knew it adjudged in Andrew Baker's case, whose child was bit by a monkey that broke his chain and got loose. And, therefore, in case of such a wild beast, or a case of a bull or cow, that doth damage where the owner knows of it, he must, at his peril, keep him up safe from doing hurt, for tho' he use his diligence to keep him up, if he escape and do harm, the owner is liable to answer damages."

It will be observed that the law divides animals into two classes. The first class is that of animals which by nature are likely to do mischief if they are let loose. As to these a person keeping them is bound so to keep them that they commit no injury. When, therefore, such an animal does an injury the owner is liable, though it had never evinced any fierceness. Thus in an action for injuries done by a bear, Crowther, J., said: "The statement in the declaration that the defendant knew the bear to be of a very fierce nature, must be taken to be proved, as every one must know that such animals as lions and bears are of a savage nature. For, though such nature may sleep for a time, this case shows that it may wake up at any time. A person who keeps such an animal is bound so to keep it that it shall do no damage. If it be insufficiently kept, or so kept that a person passing is not sufficiently protected, the owner is liable." Besozzi v. Harris, 1 F. & F., 93. The second class is that of animals *mansuetæ naturæ*, that is, of animals which are domesticated and not naturally fierce or mischievous. As to these the law was thus stated by the Lord Chancellor in a case which came before the House of Lords, Fleeming v. Orr, 2 Macq., 23: "In the case of an animal *mansuetæ naturæ* the presumption is that no harm will arise from leaving it at large. Starting from that presumption, it follows that there cannot be any blame or negligence in the owner merely from his allowing liberty to an animal which has not by nature the propensity to cause mischief. Blame can only attach to the owner when, after having ascertained that the animal has propensities not generally belonging to his race, he omits to take proper precautions to protect the public against the ill consequences of these anomalous habits, and, therefore, according to English law, it is necessary to aver and prove this knowledge on the part of the owner." The liability of the owner of a dog is regulated by the principles here set down as to the second of the classes above referred to. If the owner has no knowledge of vicious propensities in his dog he is not liable in an action for damages at the suit of a person to whom his dog may have caused injury. But it is otherwise if he has such knowledge. —*Justice of the Peace.*

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Recent Verdicts.

Short, the assassin, who attempted to kill Phelan in cold blood, was recently acquitted by a New York jury, in the face of the plainest and most conclusive testimony. Cunningham and Burton, the two alleged dynamiters, were recently convicted in England of "treason-felony" on circumstantial evidence so weak that no fair-minded judge would, on such testimony, send to a jury the case of a tramp indicted for stealing a shilling. A man named Cluveris was recently convicted of murder in the first degree at Richmond, Va., on the charge of killing his cousin, upon evidence so weak that an unprejudiced jury would not, on similar testimony, convict a negro of stealing chickens. Mrs. Yseult Dudley, the crank who attempted to kill O'Donovan Rossa, was recently acquitted by a New York jury, on the ground of insanity, after a farcical trial in which the prosecuting attorney zealously endeavored not to prosecute. She was just as sane, in the sense of being criminally responsible, as any man on the jury, and the London *Lancet*, notwithstanding the popular applause which the news of the verdict created in England, had sufficient regard for truth and law to point out that no evidence of a want of criminal responsibility was developed in the case. A man in East Tennessee deliberately killed another man to avenge some injury to a female relative—we do not remember the particulars, nor are they material—and a Senator of the United States who defended him so far forgot his duty as a member of the legal profession, as to tell the jury that it is a part of the unwritten law of this country that a man who slays the seducer of his wife or daughter is guilty of no crime. There is no such law, unless it be among barbarians—no law which allows one man upon *ex parte* evidence, hearsay or rumor, to accuse another man, to judge him, and to convey to him the first notice of the accusation in the form of capital execution, and which tries his guilt or innocence before a jury for the first time after his lips are sealed in death. Public opinion justly sympathizes with one who avenges a wrong of that nature. But if he avenge it with death it is murder. Every lawyer knows that by the law of the land it is murder. Every judge will instruct a jury that it is murder; and the jury who acquit usurp the pardoning power and lay the moral guilt of perjury on their souls. In each of these cases the verdict reflected popular fear, popular sympathy or popular prejudice. The jury in the short case either sympathized with the supposed political objects of the attempted assassination of Phelan, or else were afraid of the secret society to which Short was supposed to belong. In the Cunningham and Burton case all England was in a state of terror, and demanded a victim. In the Cluveris case the evidence was wholly circumstantial, and left the question utterly in doubt whether the victim had drowned herself or had been drowned by him. But a woman had died and the accused had been criminally intimate with her; and the loose conscience of the jury, voicing public clamor, transformed seduction into murder. Such verdicts tend to produce a growing mistrust of the system of trial by jury. They show that that system is a barbarous system; that the outcome of it is generally a reflection of unreasoning sympathy, passion and prejucice, and that it is as inefficient to protect the innocent against unfounded charges, as to protect society against notorious crime.—*Central Law Journal.*

NOTES OF RECENT DECISIONS.

1. *Taxation: Ferry Company; "Doing Business;" Lease of Dock.*—Landing and receiving passengers and freight at a ferry dock is a necessary incident to their transportation by a ferry company across a river dividing two States, and no tax can be levied upon the company as "doing business" in the State.

2. *Ibid: Ibid; Commerce.*—That a ferry company of another State has leased a dock does not show that it "does business" in the State by the implied consent of the State; for commerce cannot be carried on across the ocean or rivers except with the use of a landing place. [Gloucester Ferry Co. v. Pennsylvania, S. C. U. S., April 13, 1885.]

Costs and Fees: Docket Fees; Final Hearing; Demurrer; Dismissal.—The docket fee of twenty dollars will not be allowed unless there has been a final hearing. There must have been a hearing on the merits. Where the bill has been dismissed on the complainant's motion, after a demurrer to it was sustained, with leave to answer, there was no final hearing. [Mercartney v. Crittenden, U. S. C. C., Dist. Cal., July 28, 1885.]

1. *Landlord and Tenant: Distress; Execution; Notice to Proceed.*—Goods seized in execution by the sheriff, if left in the actual custody of the tenant (the judgment debtor), are distrainable for sent, provided notice to proceed with the execution has been given to the sheriff and he refuses or neglects to do so.

2. *Ibid: Ibid; Sufficiency.*—What is a sufficient distress must depend upon the circumstances. No precise act or form of words is necessary. [Newell v. Clark, S. C. N. J., 1884.]

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Legal Notices.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Adminstration on the personal estate of William H. Cross, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 29th day of December next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 29th day of December, 1884.
MARY A. CROSS,
LEMUEL FUGITT, Solicitor. 35 Administratrix.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John P. Ringgold, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of September next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 30th day of September, 1884.
MARY C. RINGGOLD
35 Administratrix.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Lena Relay late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 12th day of July next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 12th day of July, 1884.
THOMAS ROBINSON,
35 Executor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. August 28th 1885
In the matter of the Estate of William Cahill, late of the District of Columbia, deceased.
Application for the Probate of the last Will and Testament of the said deceased has this day been made by Catharine Deniz, executrix.
All persons interested are hereby notified to appear in this court on Friday, the 2d day of October next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. WM. M. MERRICK, Justice.
Test: 35 H. J. RAMSDELL, Register of Wills.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business. Letters Testamentary on the personal estate of Patrick J. Downing, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 21st day of August, next next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 21st day of August, 1885.
E. M. GILLETT, Sol'r. 35 MARGARET J. DOWNING.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 28th day of August, 1885.
LIZZIE J. KELLY }
v. } No. 9584. Eq.
JOHN L. KELLY. }
On motion of the plaintiff, by Mr. Leon Tobriner, her solicitor, it is ordered that the defendant, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.
By the Court. WM. M. MERRICK, Justice
True copy. Test; 35 R. J. MEIGS, Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Holding a Special Term for Orphans' Court Business. September 8, 1885.
In the case of Charles M. Matthews, Executor of Grafton Tyler, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 9th day of October, A. D. 1885, at 11 o'clock, a. m., for making payment and distribution under the Court's direction and control; when and where creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day
Test: 37 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. September 11th, 1885
In the matter of the Estate of William Wallace Greenfield, late of Washington, District of Columbia, deceased.
Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Eliza Emma Greenfield.
All persons interested are hereby notified to appear in this court on Friday, the 2d day of October next at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. W. S. COX, Justice.
Test; 37 H. J. RAMSDELL. Register of Wills.
GORDON & GORDON, Solicitors

CHANCERY SALE OF IMPROVED AND UNIMPROVED PROPERTY ON THE EAST SIDE OF THE SEVENTH STREET TURNPIKE, NEAR THE HOWARD UNIVERSITY, BETWEEN TRUMBULL STREET AND HOWARD AVENUE.
By virtue of a decree of the Supreme Court of the District of Columbia, passed in the consolidated Equity Causes No. 6354, wherein Oliver B. Magruder is complainant and John W. Beall et al defendants, and No 8874, wherein Mary V. Branigan et al. are complainants and Oliver B. Magruder et al defendants, the undersigned trustees will sell at FIVE O'CLOCK P. M., on FRIDAY, THE TWENTY FIFTH DAY OF SEPTEMBER A. D. 1885, the following described property, in parcels, according to the plat filed in said Cause No. 6354, viz.: All that part of a tract of land in Washington county in the District of Columbia, known as Mount Pleasant, and being a part of Lot No. Three (3) in the division of said tract, which was allotted to David Peter, said part or parcel of land fronting on the eastern boundary of the Seventh street turnpike leading to Rockville, and containing one square acre of land, bounded on the north by W. D. Beall's purchase, and on the south by that sold to Aaron M. Gattrell, together with all the improvements. Said property was subdivided into lots of 32 to 37 feet front, with a depth of 208. One of said lots is improved by a large Three-story Brick Dwelling and out-house.
Terms of sale: One-third of the purchase money cash in hand, and the remainder in equal installments, payable in twelve and twenty-four months from the day of sale, the said deferred payments bearing interest at the rate of six per centum per annum from date of sale. All conveyancing at cost of purchaser Taxes to be paid by the Trustees out of the proceeds of sale. A deposit of $50 on each lot required on day of sale. If the terms of sale are not complied with in ten days, the trustees reserve the right to resell the property at the risk and cost of the defaulting purchaser.
GEORGE E. HAMILTON,
FRANKLIN H. MACKEY,
Trustees.
THOS J. FISHER & Co., Auctioneers. 37.2

THIS IS TO GIVE NOTICE.
That the subscriber of Cambridge, Maryland, hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Samuel Chase Barney, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber. on or before the 4th day of September next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 4th day of September, 1885.
36 S. CHASE DE KRAFFT.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. September 8, 1885.

In the case of Jesse B. Wilson, Executor of Clark Mills, deceased, the Executor aforesaid has, with the approval of the Court appointed Friday, the 2d day of October, A. D. 1885, at 11 o'clock, a. m., for making payment and distribution under the court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 37 H. J. RAMSDELL, Register of Wills.
T. A. LAMBERT, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

ANNIE L. REED et al. v. GERTRUDE R. WILSON et al. } Equity. No. 9098.

Amos Webster and John B. Larner, trustees appointed by the Court in a decree passed herein, on the 10th day of November, 1884, to sell the real estate in these proceedings mentioned, to wit: Lot numbered twenty-four (24), being a subdivision of part of original lot number one (1) and part of original lot number thirty-three(33) in square number one hundred and twenty-seven (127), beginning for the same at a point on the west side of Seventeenth (17th) street west sixty (60) feet from the southeast corner of said square and running due west eighty-six (86) feet; thence due south thirty (30) feet; thence due east eighty-six (86) feet; thence due north thirty (30) feet along the west side of Seventeenth street west, to the place of beginning, as the same is described on the plat or plan of the City of Washington, District of Columbia, having reported to the Court that after complying with all the requirements of said decree they offered said real estate for sale at public auction in front of the premises, but could not sell the same; that since said endeavor to make a sale of said property as aforesaid they have received an offer to purchase said real estate from one J. Ford Thompson, at private sale, at and for the sum of ten thousand five hundred dollars ($10,500) on the following terms, to wit: One-third of said purchase-money in cash, and the balance in one, two and three years, with interest at the rate of six per centum per annum until paid, secured by deed of trust on the premises:

It is, this 9th day of September, 1885, therefore, ordered and decreed that the said offer of said J. Ford Thompson be, and the same is, hereby accepted. And it is further ordered and decreed that the sale of said property to said Thompson be, and the same is, hereby ratified and confirmed, unless cause to the contrary be shown on or before the 1st day of October, 1885.

Provided a copy of this order be published in the Washington Law Reporter, once a week for three weeks before the said 1st day of October, 1885.

W. S. COX, J.
A true copy 37 Test: R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 8th day of September, 1885.

JOHN M. YOUNG v. ARKANSAS G. MARKS et al } No. 9679. Equity Doc. 25.

On motion of the plaintiff, by Messrs. Edwards & Barnard, his solicitors, it is ordered that the defendants, Johanna R. Dilley, William D. Mann, and Mary S. Mann, his wife, Edward J. Todd and Catharine Todd, his wife, Samuel M. Pearson, H. W. Harris, John Sherman and A. Herr Smith, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.
A true copy. Test: 37 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 12th day of September, 1885.

JOHN W. P. MYERS v. MAURICE J. ADLER et al. } No. 9568. Equity Docket 25.

On motion of the plaintiff, by Mr. Franklin H. Mackey, his solicitor, it is, this 12th day of September, A. D. 1885, by the Court ordered that the defendant George M. Berry, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. CHARLES P. JAMES, Justice.
True copy. Test: 37 R. J. MEIGS, Clerk.

Legal Notices.

THIS IS TO GIVE NOTICE

That the subscribers, of the District of Columbia have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of August Muller, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscribers, on or before the 11th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 11th day of September, 1885.

CHARLES MADES,
HENRY MILLER,
37 Executors.
EDWVRDS & BARNARD and S. T. THOMAS, Solicitors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

HENRY SILSBEE, Trustee, v. SARAH G. GARLAND et al. } No. 7369. Eq. Doc. 20.

Joseph J. Darlington and Robert Byrd Lewis, trustees in the above cause, having reported to the Court that, pursuant to decree therein, they sold at public auction on July 3d, 1885, part of lot numbered thirteen (13) in reservation B, in the City of Washington, in the District of Columbia, in their report filed herein more particularly described, to Jonathan B. H. Smith, for the sum of $8,600.

It is, by the court this first day of September, 1885, ordered that the said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 2d day of October, 1885.

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to said last-mentioned day.

WM M. MERRICK, A. J.
A true copy. Test: 36 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Dennis F. Ryon, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 31st day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this first day of September, 1885.

L. CABELL, WILLIAMSON, Sol'r. 36 GRACE A RYON.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

In the matter of JOSEPH P. HERMAN, Bankrupt. } No. 303. In Bankruptcy.

Charles Walter, Assignee in this cause, having reported a sale of part of the original lot eight (8) and ten (10) in square five hundred and thirty-five (535) situate in the City of Washington, in the District of Columbia, to Abraham Herman, for $400, upon the terms and conditions mentioned in said report:

It is, this 1st day of September, 1885, ordered, adjudged and decreed, that said sale be confirmed unless cause to the contrary be shown on or before the 2d day of October, 1885.

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said day.

By order of the Court. WM. M. MERRICK, Justice.
A true copy. Test: 36 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. September 5, 1885.

In the matter of the Will of Carl G. Freudenberg, late of Washington, D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Annie K. Freudenberg.

All persons interested are hereby notified to appear in this court on Friday the 25th day of September next, at 11 o'clock, a m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter and The Evening Star previous to the said day.

By the Court. WM. M. MERRICK, Justice.
Test: 36 H. J. RAMSDELL, Register of Wills.
F. P. B. SANDS, Solicitor.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 3d day of September, 1885.

SARAH B. SMITH v. CLAUDE W. SMITH. } No. 9590. Equity.

On motion of the plaintiff, by Mr. C. Storrs, her solicitor, it is ordered that the defendant, Claude W. Smith, cause his appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. WM. M. MERRICK, Justice.
True copy: Test: 36 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, September 4th, 1885.

In the matter of the Estate of George Weinandt, late of the District of Columbia, deceased

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by George Viehmann.

All persons interested are hereby notified to appear in this court on Friday, the 25th day of September next, at 12 o'clock m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WM. M. MERRICK, Justice.
Test: 36 H. J. RAMSDELL, Register of Wills.
C. A. WALTER, Solicitor.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Jane O'Neill, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of June, 1884.

his
JOHN ⋈ O'NEILL,
mark
36 Administrator.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administrationon the personal estate of Robert Stewart, late of the District of Columbia, dec'd,

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of April, 1885

his
JOHN ⋈ STEWART,
mark
ROBT. J. MURRAY, Solicitor. 36 Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. August 28th, 1885.

In the matter of the Estate of Henrietta P. Plant, late of the City of Washington, D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration c. t. a. on the Estate of the said deceased has this day been made by George H. Plant.

All persons interested are hereby notified to appear in this court on Friday the 18th day of September next at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration c. t. a. on the estate of the said deceased should not issue as prayed. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WM. M. MERRICK. Justice.
Test: 36 H. J. RAMSDELL, Register of Wills.
CHAPIN BROWN, Solicitor.

Legal Notices.

THIS IS GIVE NOTICE.

That the subscribers of Bloomsburg, Pa., and the District of Columbia have obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court Business, Letters of Administration on the personal estate of Jane R. Eliot, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscribers on or before the 2d day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 2d day of September, 1885.

36 J. B. ROBISON,
F. W. JONES, Solicitor. H. E. GOODRICH.

THIS IS TO GIVE NOICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of James Mason, late of said District, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber, on or before the 1st day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day of September, 1885.
JOHN E. NORRIS, Solicitor. 36 JOHN MASON.

THIS IS TO GIVE NOTICE.

That the subscriber, of Washington City, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters of Administration on the personal estate of Edward P. Walsh, alias Edwar Walsh, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 5th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of September, 1885.
O. H. HERRING, Solicitor. 36 W. A. REDMOND.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

MARY FURMAGE ET AL. v. JANE R. FURMAGE ET AL. } No. 9267. Eq. Doc. 24.

Irwin B. Linton, trustee in the above cause, having reported to the Court that, pursuant to the decree therein, he sold at public auction, on June 30th, 1885, sub-lot 14, in square 139, in the City of Washington, in the District of Columbia, to John A Prescott, for the sum of $3710, being at the rate of $1.40 per square foot:

It is this 1st day of September, 1885, by the Court ordered that the said sale be ratified and confirmed unless cause to the contrary be shown on or before the 1st day of October, 1885.

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to said last-mentioned day.

WM M. MERRICK, A. J.
A true copy. Test: 36 R J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 2d day of September, 1885.

MARY L FORD v. JOHN B. FORD. } No. 9431. Eq. Doc. 24,

On motion of the plaintiff, by Mr. Chas. Maurice Smith, her solicitor, it is ordered that the defendant, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. WM. M. MERRICK, Justice.
True copy. Test: 36 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 1st day of September, 1885.

WILLIAM B VINTON v. ELIZABETH VINTON. } No. 9588.

On motion of the plaintiff, by Mr. W. Preston Williamson, his solicitor, is it ordered that the defendant, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. WM. M. MERRICK, Justice.
A true copy. Test: 36 R. J. MEIGS, Clerk.

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Washington Law Reporter

WASHINGTON - - - - - September 26, 1885.

GEORGE B. CORKHILL - - - EDITOR

IN an article on "The Law of Judicial Notice," by H. Campbell Black, under the heading, "Geographical Features and Civil Divisions," the *American Law Register* for September, 1885, has the following:

Courts are bound to take judicial notice of the leading geographical features of the country; but the minuteness of such knowledge is inversely proportional to the distance, being much more specific and detailed in regard to the territory over which the court has jurisdiction than with respect to foreign lands or even different States. Thus courts will be presumed to be acquainted with the great geographical features of the States—such as lakes, rivers and mountains—and of the division of the State into counties, cities and towns, and of their relative positions; Wianipiseogee Lake Co. *vs.* Young, 40 N. H., 420; Hinckley *vs.* Beckwith, 23 Wis., 328; Goodwin *vs.* Appleton, 22 Me., 453; Martin *vs.* Martin, 51 Id., 366. And of the navigability of streams; Neaderhouser v. State, 28 Ind., 257. But not of the precise boundaries and distances, nor of the local situation and distances of different places in counties from each other; Goodwin v. Appleton, *supra.* But the area of an established county is known to the court without proof; Commissioners v. Spitler, 13 Ind., 225.

In regard to the names of towns and their situation (a controverted point), it was said in Illinois that where the premises in litigation were described as "lot five in block one in Haley's addition to the city of Monmouth," the supreme court would take judicial notice that there is a city of Monmouth in Warren county, Illinois, and would presume that to be the city intended; Harding v. Strong, 42 Ill., 148. But it is the general rule that the higher courts of the State can only notice those civil divisions which are established and prescribed by the legislature. Thus the Supreme Court of Indiana cannot judicially know the names of the townships composing a given county, for the townships are established by the board of county commissioners, not by the legislature; Bragg v. Rush County, 34 Ind., 406. However it is permitted them to notice that the State and the township are distinct political organizations; La-Grange v. Chapman, 11 Mich., 499. As to the knowledge required of points outside of the State the decisions are not entirely harmonious. It has been held that the courts cannot officially know of the existence of a town or city of a specified name, as New Orleans, New York, Janesville, not lying within the State; Riggin v. Collier, 6 Mo., 568; Woodward v. Railroad, 21 Wis., 309; Whitlock v. Castro, 22 Tex., 108; Richardson v. Williams, 2 Port. (Ala.), 239. But these decisions are not satisfactory, and it is difficult to conceive any substantial reason why courts should be presumed ignorant of the existence and location of those well-known centres of traffic and commerce which are so familiar in the everyday parlance of private individuals. And see Rice v. Montgomery, 4 Biss., 75. At any rate, it is apprehended that this restriction could not be applied to the courts of the United States, for the reasons given above for their judicial knowledge of the laws of the various States. And the important geographical features of the United States, considered as one country, may be judicially noticed; *e. g.*, that the State of Missouri is east of the Rocky mountains; Price v. Page, 24 Mo., 65. In regard to the length of time required to make a railway journey, or for carriers to transport goods from one designated city to another, the prevailing doctrine seems to be that the court will require proof, not being able to determine officially what time should be allowed; Rice v. Montgomeyr, *supra.* But in a recent Pennsylvania case it was said: "We apprehend that the ordinary speed of railway trains is a matter for judicial cognizance, and hence a very simple calculation will demonstrate with approximate certainty the time within which mails may be transported between such

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cities as New York and Pittsburg;" and hence an instruction that "there was nothing improbable in the idea that a notice of protest could reach Pittsburg the day following the maturity of the note," was not erroneous; although, perhaps the learned (trial) judge went too far in stating that a train leaving New York at five or six in the evening would reach Pittsburg the next morning at eight;" Pearce v. Langfit, 101 Penn. St., 512. And in another instance the court took judicial notice of the usual duration of voyages across the Atlantic by steam or other packet ships, so far as to determine that one who was proved to have taken passage on a particular vessel which vessel had not yet been heard from after a great lapse of time, must be dead; Oppenheim v. Wolf, 3 Sandf. Ch., 571.

There are but few cases illustrating the rules of judicial notice as applied to the geographical features of foreign countries, but those cases exhibit an unexpected liberality. Thus the Louisiana court once took notice that the river Mersey in England is filled with salt water, the tide ebbing and flowing to a great height therein; Whitney v. Gauche, 11 La. Ann., 432. And in the case of The Peterhoff, Blatchf. Prize Cas., 463, the court even went so far as to take judicial notice of the situation of a town in a foreign country, and that a bar exists at the mouth of the river on which that town lies, which vessels of the draught of the ship in suit cannot cross.

THE question who is to be deemed "the owner" of a factory or workshop within the meaning of the Fire Escape law was before the Supreme Court of Ohio, in December last, in the case of Lee v. Smith (13 Weekly Law Bulletin, 151), and they held that the owner of the building in which a tenant carried on a manufactuaing business "was not an owner of the factory" within the meaning of the statute.

BEWARE what you say to others because you only reveal yourself thereby.

Supreme Court District of Columbia

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

FRANK A. COTHARIN *vs.* E. G. DAVIS.

LAW. No. 21,313.

Decided June 8, 1885.
Justices COX, JAMES and MERRICK sitting.

1. Every bill of exceptions must be complete, either by setting out the facts on which it is founded, or by referring to some other bill of exceptions which distinctly enumerates them. Affirming Oliver *vs.* Cameron, Mac A. & Mackey, 237.
2. It is error to exclude from the jury parol evidence tending to show that for the express purpose of concealing the magnitude of the undertaking a blank was left in the contract, and was filled up without the consent of the party sought to be charged, so as to make the contract a larger one than the latter had in contemplation at the time of signing.
3. Evidence that the paper was in blank at the time of signing is evidence tending to prove the above facts.
4. The rule which forbids a resort to parol evidence to *vary* a contract does not forbid such resort to *supply* omissions, or to supply blanks.

THE CASE is stated in the opinion.

FRED. W. JONES for plaintiff.

R. ROSS PERRY for defendant:

1. As this claim is not within the protection of negotiable instruments, the assignee takes it subject to all defences; Parsons on Contracts (5th ed.), 217.

2. The refusal of the court to permit the jury to consider in any way the evidence to show that the contract sued on was signed in blank, and that this blank was afterwards, without the knowledge, consent, or authority of the defendant, filled up with the figures 50,000, was error. That this was a material alteration of the contract, need not be discussed. That an unauthorized alteration of a contract in a material respect will avoid it, is of course settled law. Chitty on Cont., (10th Am. ed.) p. 757, note (*o*).; 2 Pars. Cont. (5th ed.), 716; 1 Smith's L. C. (6th Am. ed.), *956; Bigelow on Fraud, 98, 99, 104; Lewis v. Shepherd, 1 Mackey, 46; Angle v. Co., 92 U. S., 330, 333, 334, 336–339, 342. (1875.)

The whole case would seem to be capable of expression in a certain number of questions;

1. Could the contract be legally signed with the blank in it?

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2. If yes, could not the parties agree what figures were to limit the edition, such figures not being in the written contract?

3. If they could so agree, is it not competent, and even necessary for the integrity of the contract, that the oral testimony of these and other competent witnesses should be heard about this agreement as to the edition contemplated by this contract?

It seems to counsel that an affirmative answer must necessarily be given to each of these questions; otherwise the contract so signed in blank is either illegal—which can hardly be said—or the plaintiff had the right to fill the blank, and thus increase *ad libitum* the limit of the contract, without the knowledge and consent of the defendant, or rather *against the express agreement of both parties* as to the said limit, which is monstrous. 1 Greenleaf on Evidence, sec. 284*a*.; Lull v. Cass, 43 N. H., 62; Keith v. Kerr, 17 Ind., 284; Taylor v. Galland, 3 Iowa, 17. Moss v. Green, 41 Mo.. 389; Webster v. Hodgkins, 25 N. H., (5 Foster) 128; Miller v. Fichthorn, 31 Pa. St., 252; Winn v. Chamberlin, 32 Vt., 318.

3. The defendant offered to prove by a competent witness that the signing of the contract in question, with the blank in it, had been procured by the plaintiff by means of fraudulent representations and concealments. This testimony was excluded.

It would hardly seem necessary to cite authority to establish that, when the question is of fraud, even a sealed instrument may be impeached by parol testimony. The solemn recital in a deed of a payment of money has been allowed to be disproved by parol. Again, a deed absolute in form may be shown to be a mortgage only in effect; and in both these cases the reason given is that it would be a fraud to set up even a solemn deed against the express agreement of the parties, and therefore that agreement may be proven by parol—the only way in which it can, in the great majorfty of cases, be proven. Starkie on Evidence, 672 (marginal); Sprigg v. The Bank, 14 Peters, 201; Babcock v. Wyman, 19 Howard, 289, &c., &c.; Bottomly v. United States, 1 Story, 135; Van Buskirk v. Day, 22 Ill., 260; Calkins v. State, 13 Wis., 389; Buck v. Appleton, 14 Maine, 284.

Where a party has by fraud prevented the reduction of a part of a contract to writing, the whole contract is open to parol proof in favor of the other contracting party. Phyfe v. Wardell, 2 Edw. Ch., (N. Y., 47; Elliot v. Connell, 13 Miss. (5 Smede & M.), 91; Kennedy v. Kennedy, 2 Ala., 571; Blanchard v. Moore, 4 J. J. Marshal, 471; Huston v. Noble, 4 J. J. Marshal, 130; Anderson v. Bacon, 1 A. K. Marshall, 48; Martin v. Lewis, 1 A. K. Marshall, 102; Wesley v. Thomas, 6 Harris & J., 435; Chetwood v. Brittain, 2 N. J. Eq., (1 Green,) 438.

Mr. Justice Cox delivered the opinion of the court.

This case, which is before us for the second time, was an action brought upon a written paper in the following form:

"WASHINGTON, D. C., *May* 6, 1879.

F. A. COTHARIN: You are hereby authorized to insert my advertisement in the 'Musical Gift,' to occupy one-half column second page, for and in consideration of which I agree to pay to you or order, on presentation of this contract and certificate from printer as to the number printed, at the rate of $10 for each and every 1,000 copies of the total number printed and delivered for distribution; 500 copies to be delivered to me for free distribution. The edition not to exceed 50,000 copies. In case I do not furnish copy of advertisement for above edition within five days from above date, space may be charged for at the same rate as though copy had been furnished.

E. G. DAVIS,
Street and No., 719 *Market Space.*"

The record presents ten bills of exceptions, of which the first only is in proper condition to be considered by the court. Not one of the others embody any testimony or even refer to any previous bills of exceptions.

In the case of Oliver against Cameron, Mac Arthur & Mackey, 237, this court recognized the rule which has prevailed in Maryland, that every bill of exceptions must be complete, either by setting out all the facts on which it is founded, or by

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referring to some other bill of exceptions which distinctly enumerates them. In this case none of the bills of exceptions, after the first, contain any reference to the preceding ones, or incorporate any fact upon which they are founded.

We have, therefore, only to consider the first bill of exceptions, and from that it appears that after the plaintiff had offered *prima facie* evidence to prove the handwriting of the defendant, &c., and had shown his own performance of the undertaking, the defendant, made an offer of proof which may be said to embrace two propositions. He offered first to prove that when he signed the contract there was a blank where the figures "50,000" now appear; and, secondly, to show that it was the understanding between him and the plaintiff that the blank was to be left unfilled, and that the defendant was only to pay the plaintiff ten dollars under said contract instead of five hundred dollars as claimed in this action.

This offer was refused, and it was said, in the course of the argument, that the court below felt constrained to exclude the evidence under the previous ruling of this court in reviewing the first trial of the case. It becomes, therefore, necessary to refer to the opinion which was delivered before in reference to this same case, and which is reported in 2d Mackey, 230.

It appears that at the first trial, after the defendant had himself testified to the existence of a blank in the paper when it was signed by him, he offered to show that similar papers had been presented to other parties in Washington also containing blanks, all of which were found afterwards to be filled up with the same number of "fifty thousand" copies. That evidence was admitted below, against objection. The fact offered to be proved was considered by this court *res inter alios*, and the judgment below was reversed on that ground, and that is the only question the court professed to decide in the former hearing given in the General Term. But in delivering the opinion in that case the decision on that question was prefaced by some suggestions and queries which are said to have influenced the court at the last trial in the ruling which is now complained of. I said on that occasion:

"If any wrong was done, the probability, it seems to me is that it was in omitting the words (these large figures) 50,000 copies—for the purpose of preventing the defendant's attention from being called to the magnitude of the undertaking he was entering upon. He was thus, perhaps, lulled into some security and deterred from inspecting the instrument with the care that he ought to have exercised. Whether that folly of his is a defence or not is not a question before us, because the record limits us to the question of evidence simply."

It will be seen, therefore, that we disclaimed any discussion of the question thus suggested, and really therefore it had not the force of a decision which the court below was bound to follow.

Upon re-examing this question and reconsidering the question which is now presented, it seems to us very plain that if the jury should find that the plaintiff in this case left a blank in this paper and filled it up after it was signed by the defendant, for the express purpose of concealing from him the magnitude of the undertaking, he was attempting to procure from him a larger contract than the defendant had in contemplation, which would be a plain fraud, and evidence tending to establish that ought to be admitted, and evidence that the paper was in blank when signed, and was filled up afterwards, is evidence tending to prove that condition of things.

But there is still another question. Proof was offered to show that the blank, by common understanding, was to be left blank, and that the defendant was only to pay complainant ten dollars under the settled contract. This was objected to on the ground that it was parol evidence offered to contradict or vary a written agreement.

Here is an agreement which contains a statement "the edition not to exceed —— copies." We consider this as having the same effect as if deliberately written out in this form and as if the party had said he would pay ten dollars for every thousand, the edition not to exceed —— copies, which is equivalent to saying that he would pay ten dollars for every

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thousand copies, to the amount of blank dollars.

Now, taking that as a written contract, it would be manifestly incomplete. There would be an omission, a blank in such contract, and the rule which forbids a resort to parol evidence to *vary* a contract does not forbid a resort to parol evidence to *supply* omissions or to supply blanks. There will be found a good collection of cases on this subject in the notes to 2 Phillips on Evidence, chap. 1, in which it appears that the courts have gone very far in allowing the introduction of parol evidence to show what they call a *supplementary* contract, particularly when the contract on its face is manifestly incomplete and even in cases where there is no appearance of such incompleteness on the face of the contract.

Now we think that this paper on its face was an incomplete written contract. It had a blank and it was competent for parties to supply that blank by parol proof, and it was therefore competent to show, outside of the paper, that it was agreed that the blank should remain there and that in fact the number of copies should be only five hundred more, so as to create a liability, in the whole, of ten dollars.

We are therefore compelled to reverse the judgment in this case, and to order a new trial.

United States Supreme Court.

No. 156 —OCTOBER TERM, 1884.

FRANCES DODGE, WILLIAM CHAPMAN, H. H. Dodge et al., *Appellants*,

vs.

THOMAS KNOWLES.

Appeal from the Supreme Court District of Columbia.

April 13, 1885.

Neither the liability for provisions supplied at a dwelling house where a husband and wife and their children are living together, nor a promissory note given by the husband, describing himself as trustee for the wife, in payment for such supplies, can be charged in equity upon the wife's separate estate, without clear proof that she contracted the debt in her own behalf, or intended to bind her separate estate for its payment.

MR. Justice GRAY delivered the opinion of the Court.

This is an appeal by the children and heirs at law of Frances I. Dodge, a married woman, deceased, from a decree ordering her real estate to be sold for the payment of debts alleged to have been due from her to the appellee, upon a bill filed by him, in behalf of himself and other creditors who might come in, against the husband in his own right and as trustee and executor of the wife, and against her children and various persons interested in the real estate.

The following facts were undisputed: By an ante-nuptial settlement, executed on January 22, 1852, Mrs. Dodge (then Frances I. Chapman) conveyed all her real estate to Mr. Dodge, in trust, to hold the same for her sole and separate use and benefit during her life, and so that the same, and the rents and profits thereof, should not be liable for his debts, "or in any way subject to his control or contracts, except so far as is consistent with the provisions of this contract;" and to permit her, by herself or her attorney appointed by writing under her hand, to collect and receive the rents and profits from time to time accruing, and to dispose of the same as she might see fit, for her own separate use and benefit; and if she should, by writing under her own hand and seal and attested by two witnesses, direct the leasing or the absolute sale of the real estate or any part thereof, then the trustee should lease or sell and convey the same accordingly, and collect the proceeds of any sale, and invest them in his name as her trustee, in such manner as she might approve and require, "and hold the said investments, when made, for the same uses, trusts and purposes, and with the like power and authority, and subject to the like limitations, as are hereinbefore declared of and concerning the original trust subject;" and it was provided that the wife, notwithstanding her coverture, might by will devise and dispose of the estate, or any part thereof, as she might see fit, and the trustee should hold and dispose of the same accordingly; and further provisions were made for the disposition of the estate in case she should make no will.

On January 25, 1876, the wife died, leaving three children, and a will, by which, by virtue of the power of appointment reserved to her in the marriage settlement, she devised all her real estate to her husband in trust for the use and benefit of two of her children, and appointed him executor, and made no provision for the payment of debts.

The plaintiff was a retail grocer, and at different times from 1870 to 1875 delivered groceries at the dwelling house where the husband and wife and their children resided together, and received from the husband, in payment therefor, or in renewal of other simi-

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lar notes, promissory notes signed by him in this form: "F. Dodge, trustee for Fannie I. Dodge," payable to the plaintiff or order. At the time of the wife's death, the plaintiff held four such notes, payable at various periods not more than four months after date, for sums amounting in all to $2,171.61, and interest, and had delivered groceries to the amount of $120.10, for which no note had been given.

The personal property left by Mrs. Dodge was exhausted by a distribution made by her executor among her creditors, under a decree of the probate court, by which the plaintiff received a dividend of $117 upon his claim.

It was further alleged in the bill, and denied in the answer of the children, that at the time of the giving of the four notes, and for several years before, Mrs. Dodge was indebted to the plaintiff in a large sum of money for groceries furnished to her, on the credit of her sole and separate estate, for the maintenance of herself and her children and her husband, he being insolvent and entirely without property; and that she caused him for her to make and deliver the notes to the plaintiff; "all which said indebtedness said Frances I. Dodge declared was chargeable to her sole and separate estate, upon the faith of which it was incurred, it having been represented to the plaintiff that her intention to fully secure the same by a proper conveyance in trust had been from time to time before her death prevented by her physical condition;" and that at the time of her death there was also due to plaintiff the sum of $120.10 on open account for groceries furnished as aforesaid.

The material parts of the testimony introduced by the plaintiff were as follows:

The plaintiff testified: "The groceries were furnished to Mrs. Fannie I. Dodge. They were furnished to the credit of Mrs. Dodge. The four notes were received in part renewal of other notes and a running grocery account. Mrs. Dodge is also indebted to me in the sum of $120.10 for groceries furnished upon her faith and credit. These groceries were delivered at her dwelling house. They were ordered by Mr. Dodge and the servants from time to time. Occasionally Mrs. Dodge was in the store and ordered some. These articles were furnished upon the credit of Mrs. Dodge, because I expected Mrs. Dodge to pay me for them. I did not expect Mr. Dodge to pay for them, because Mrs. Dodge was looked upon as being worth means, and Mr. Dodge not. Mr. Dodge never offered to pay me this account, or any portion of it, or to give his own note for any portion of it. He has handed me money which has been placed to the credit of the account. He has repeatedly told me that Mrs. Dodge had plenty of property to pay her debts, and would. He promised me security from Mrs. Dodge upon her real estate for this indebtedness. I did not get it, owing to Mrs. Dodge's death. I did not get a promise from anybody else that I should have real estate security. Mrs. Dodge never personally promised to give me real estate security. I did not see her during the latter part of the transaction." The plaintiff put in evidence a letter written to him on January 10, 1876, by Mr. Dodge, saying: "My wife is dangerously ill, and has been ever since I saw you. Of course I can do nothing yet as to the security promised you. As long as Mrs. Dodge lives, it requires her signature; if she dies, I am still trustee for her heirs, and can then execute a deed to you as such trustee."

The husband testified that he was a clerk in an insurance office, and further testified: "The notes were signed 'F. Dodge, trustee for Fannie I. Dodge,' because I had no property. I had no property to give a note upon; I was bankrupt. They were to be chargeable to her. They would not have been signed by me as trustee, unless it was for her and upon her responsibility. I never accompanied the delivery of those notes with the declaration that they were intended to bind her real estate—not that I can remember. These notes were given with the knowledge of my wife, under her general authority. The amounts do not represent any indebtedness contracted by me. The articles furnished by Mr. Knowles were to eat. The family consumed them. My wife's family. Her children and servants comprised that family. These articles were purchased by her and on her credit. She made the exclusive arrangements for their purchase through me, as trustee. I was an inmate of the family during this time; my salary furnished the marketing, and I gave everything I had to the family. I could not support the whole family. She furnished medicines, wood and coal. I told Mr. Knowles verbally that Mrs. Dodge was ill with paralysis; that she could not be spoken to on business; that when she got well I would get her to give him real estate security if I could. I afterwards wrote him the letter of January 10, 1876. The promise given by me was in connection with the notes held by Mr. Knowles. By signing a note I could not make it binding on real estate. These notes were not intended by me to be binding upon her real estate any more than suit at law would make them so. I only meant that she had real estate enough to secure any debt she was making."

At the hearing upon bill, answers, a gen-

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eral replication and evidence, the Supreme Court of the District of Columbia at Special Term entered a decree dismissing the bill. Upon appeal to the General Term that decree was reversed, and it was adjudged that the plaintiff's claim, as stated in the bill, be a lien upon the real estate included in the marriage settlement. 1 Mackey, 66. The children appealed to this court.

This being an appeal in equity, the facts as well as the law are to be determined by this court. The opinion of the court below and the brief of the appellant deal principally with questions of the manner in which the wife could charge her separate estate, and of the effect of her exercise of the power of appointment as making that estate assets for the payment of her debts. But it is unnecessary to consider either of those questions, because we do not find in the record any satisfactory evidence that the debts sought to be enforced were the wife's debts, or that she intended to charge them upon her separate estate.

The plaintiff's claims are for groceries supplied to a household in which the husband and wife and their children were living together; and upon promissory notes given by the husband, describing himself as trustee for the wife, in payment for groceries so supplied. The obligation to pay for the supplies of the family is ordinarily a debt of the husband. Promissary notes given by the husband, though describing himself as trustee for the wife, bind him personally, and do not bind her estate, unless he is clearly proved to have had authority to give them in her behalf. The terms of the marriage settlement did not authorize the husband to contract any debts on the wife's account. The evidence introduced by the plaintiff consisted of the testimony of himself and of the husband. The plaintiff's testimony was rather to his own motives and reasons for charging the goods to the wife, than to any contract by her; and the husband's testimony was more to legal conclusions than to specific facts.

While the plaintiff testified in general terms that the goods were furnished to the wife, and upon her faith and credit, and gave as his reason for furnishing them upon her credit, that he expected her to pay for them, and did not expect the husband to do so, because she was looked upon as worth means, and he was not; and stated that the husband promised him security from the wife upon her real estate; yet the only specific facts to which he testified, bearing upon the question who was his debtor, were that the groceries were delivered at the dwelling house; that they were ordered by the husband and the servants, and occasionally by the wife; and that the husband had handed him money which had been placed to the credit of the account. He did not testify to any express contract by the wife, and he admitted that she never promised to give him security on her real estate.

The testimony of the husband was hardly more direct. He testified indeed that the goods were purchased by the wife and on her credit, and that she made the exclusive arrangements for their purchase through him as trustee; that the notes were to be chargeable to her, and would not be signed by him as trustee, unless it was for her and upon her responsibility; and that they "were given with her knowledge, under her general authority." But he did not define or indicate the nature or extent of the general authority to which he referred; he did not testify that she ever promised to pay for the goods, or expressly authorized him to promise that she would pay for them; and he did testify that he never, so far as he could remember, accompanied the delivery of the notes with a declaration that they were intended to bind her real estate.

Such testimony is wholly insufficient to warrant a court of equity in decreeing that debts, which are *prima facie* the debts of the husband, should be considered as debts of the wife, and made a lien upon her separate estate.

Decree reversed, and case remanded with directions to dismiss the bill.

On motion to set aside a judgment entered April 13, 1885, and to dismiss the appeal.

[May 4, 1885.]

Mr. Chief Justice WAITE delivered the opinion of the court.

The facts on which this motion rests are these:

The final decree in the cause was rendered February 23, 1881. At the foot of the decree, and as part of the original entry, is the following:

"From this decree the defendants pray an appeal to the Supreme Court of the United States, which appeal is hereby allowed.

"By the court.

"D. K. CARTTER,
"*Ch'f Just.*"

Security upon the appeal was not taken until November 5, 1881, which was after the term when the decree was rendered. No citation was served on the appellee, but the appeal was duly docketed in this court November 11, 1881. The cause was called in its regular order for the first time January 9,

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1885, and on that day submitted on printed brief by the counsel for the appellants, no one appearing for the appellee. On the 17th of January, the court, of its own motion, ordered "that this cause be reargued, either orally or on printed briefs, to be filed on or before the first Monday in March next." The purpose of this order was to allow the appellee an opportunity to be heard. A copy was served on him personally on or about January 21, and he wrote the clerk, under the date of February 28, as follows:

"Having been advised by counsel that no appeal has ever been perfected to the Supreme Court of the United States in the case of which you write, I would inform you that I respectfully decline to authorize an appearance to be entered in that court for me in that cause for any purpose whatever."

On March 2, the appellants again submitted the cause on a printed brief, no one appearing for the appellee. The case was taken under advisement and held until April 13, when the decree of the court below was reversed, and an entry made to that effect. On the 20th of April, the appellee came, and entering an appearance only for the purposes of his motion, moved to set aside and annul the judgment of reversal, and to dismiss the appeal, 1, because no citation had been issued or served, and, 2, because the value of the matter in dispute did not exceed $2,500.

As to the last ground of the motion, it is sufficient to say that the decree appealed from was for more than $2,500, and it charged the property of the appellants with the full amount. Upon the face of the record, therefore, our jurisdiction is complete. Such being the case, we are not willing to consider extrinsic evidence at this late day for the purpose of ascertaining whether the actual value of the property from which the collection must be made is sufficient to pay the whole debt or not.

The allowance of the appeal by the court while in session and acting judicially, at the term in which the decree was rendered, constituted a valid appeal, of which the appellee was bound in law to take notice. The docketing of the cause in time perfected the jurisdiction of this court. The giving of the bond was not essential to the taking though it was to the due prosecution of the appeal. It was furnished and accepted in this case before the cause was docketed here. Had this not been done we would have given the appellants leave to supply the omission before dismissing the appeal. All this was decided, on full consideration, in Peugh v. Davis, 110 U. S., 227.

It has also been decided that if an appeal was allowed in open court during the term in which the decree was rendered a citation was required, as matter of procedure, if the security was not furnished until after the term; but in Railroad Co v. Blair, 160 U. S., 662, it was said: "Still, an appeal, otherwise regular, would not probably be dismissed absolutely for want of a citation, if it appeared, by clear and unmistakable evidence, outside of the record, that the allowance was made in open court at the proper term, and that the appellee had actual notice of what had been done."

The citation is intended as notice to the appellee that an appeal has been taken and will be duly prosecuted. No special form is prescribed. The purpose is notice, so that the appellee may appear and be heard. The judicial allowance of an appeal in open court at the term in which the decree has been rendered is sufficient notice of the taking of an appeal. Security is only for the due prosecution of the appeal. The citation, if security is taken out of court, or after the term, is only necessary to show that the appeal which was allowed in term has not been abandoned by the failure to furnish the security before the adjournment. It is not jurisdictional. Its only purpose is notice. If by accident it has been omitted, a motion to dismiss an appeal allowed in open court, and at the proper term, will never be granted until an opportunity to give the requisite notice has been furnished, and this, whether the motion was made after the expiration of two years from the rendition of the decree or before. Here, before the cause came on for final hearing notice was given the appellee, by order of the court, that the appeal taken in open court was being prosecuted, and that a reargument at an appointed time was desired. In response to this notice, the appellee declined to appear, not because he had not been served with a citation, but because no appeal had been perfected. Had he complained of a want of citation, the omission might have been supplied if, on consideration, it should have been deemed necessary. But the order which was served on him to appear and argue the cause if he saw fit was of itself the legal equivalent of a citation for all the purposes of this appeal.

The motions are denied.

As the milkman handed a quart of London milk to a bright little girl, he solaced himself with the remark, "To the pure, all things are pure."

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United States Court of Claims

U. P. Railway *vs.* The United States.

1. The Supreme Court reviews the judgments of the Court of Claims only upon the facts found by the court, and does not compare such finding with the requests of the parties.
2. The requests for findings of facts by the parties are for the assistance of the Court of Claims, and do not form part of the record of the case for the Supreme Court, on appeal, and cannot be made so by a motion to the court to find or rule specifically and repeatedly on each one.
3. The court directed the clerk not to include such request and motions in the transcript of the case sent to the Supreme Court.

After the trial of this case on its merits, and the filing by the court of "a finding of the facts in the case established by the evidence," the claimant moved for a separate and specific finding on each one of its requests. The motion was overruled. 20 C. Cl. R., 508.

Subsequently, after an appeal had been taken, the claimant requested the clerk to include in the record for the Supreme Court requests of both parties for findings, the motion and ruling thereon, and moved the court to so direct the clerk.

The following order and opinion were filed:

Order to the Clerk.

Upon the foregoing requests, the court directs the clerk to embrace in the transcript of the record to be certified to the Supreme Court all that is therein asked for *except* "all requests to find facts submitted by either party to the court and particularly the requests for findings of facts, marked A and B, annexed to a motion heretofore filed in said cause by said Union Pacific Railway Company, on or about the 1st of June, 1885, and the said motion and the order or opinion of the court thereon," which will be omitted.

Opinion.

Richardson, C. J., filed the opinion of the judges who heard the case.

The "Regulations prescribed by the Supreme Court of the United States under which appeals may be taken from the Court of Claims to said Supreme Court" prescribe as follows:

"Rule 1. In all cases hereafter decided in the Court of Claims, in which, by the act of Congress, such appeals are allowable, they shall be heard in the Supreme Court upon the following record, and none other:

"1. A transcript of the pleadings in the case, of the final judgment or decree of the court, and of such interlocutory orders, rulings, judgments and decrees as may be necessary to a proper review of the case.

"2. A finding by the Court of Claims of the facts in the case, established by the evidence, in the nature of a special verdict, but not the evidence establishing them; and a separate statement of the conclusions of law upon said facts on which the court found its judgment or decree. The finding of facts and conclusions of law to be certified to this court as part of the record."

In the present case, the court made and filed, at the time of entering judgment, "a finding of the facts in the case established by the evidence, in the nature of a special verdict" (20 Ct. Cls. Rep., 70), and it will be certified as part of the record required by the second paragraph of the above rule.

The requests for findings of fact submitted by the parties before trial are for the assistance of the court, and not for the purpose of laying a foundation for review on appeal. They no more form part of the record for appeal than do the briefs and printed arguments. Nor can the parties make them part of the record by annexing them to a motion requesting the court to find separately and specifically as to each one. Such a motion adds nothing to the requests previously filed but merely renews them, and the court was bound to do no more upon the motion than it was required to do upon the requests when first submitted, and that was to make "a finding of the facts established by the evidence," which was done, and the same will be embraced in the transcript of the record.

No motion has been made for a new trial, specifying errors or omissions in the findings, and none such have been suggested to the court in any form. Calhoun's Case, 14 Ct. Cls. Rep., 193; Roche's Case, 18 Ct. Cls. Rep., 289.

In our opinion the Supreme Court would not undertake to compare the findings of this court with the voluminous requests of the parties (embracing more than eighty printed pages), for the purpose of determining whether or not we had covered the whole ground, and, therefore, would not sanction the sending up of such a mass of useless matter.

In the case of De Groot (5 Wall., 419, and 7 Ct. Cls. Rep., 5), Mr. Justice Miller, speaking for the court, said: "We take this occasion to say that we shall adhere strictly to the rules we have prescribed, and shall regard no other matter found in the transcripts sent to us than what they allow, and that in proper cases the cost of the useless part of the record will be taxed against the party who brings it here."

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In overruling the claimant's motion of June 1. to have the court find separately and specifically as to each one of its requests, we expressed our views on this subject, and on further reflection we reaffirm the same and make them part of this opinion. 20 Ct. Cls. Rep., 508.

Court of Appeals Maryland.

JAMES *vs.* THE STATE.

1. *Criminal Law: Gambling; Pool Selling.*—Pool selling on horse races is not gambling within the statute.
2. *Ibid: Ibid; Betting on Horse Race; Semble,* that betting on horse races is not gambling.

Appeal from Baltimore city.

The defendants were indicted for gambling. They sold "pools" at horse races. These pools were known as "auction," "mutual" and "combination" pools. In "auction" pools, one purchaser (highest bidder) buys the first choice among a number of horses in a race, to be named by him as the winning horse; others buy the second choice, third, etc. The horses not so chosen are called "the field" and are also offered to the highest bidder. He who names the winning horse takes all the money paid (the pool), less five per cent. commission to the person conducting the pool. In "mutual" pools, a list of the horses is placed on a board in view of the bidders, each horse being numbered, with a space to the right to show how often the horse has been chosen. The "field" is constituted as before. Those who choose the winning horse take the money paid (the pool) in equal parts, less the commission aforesaid. A "combination" pool is similar to a "mutual" one, except that there must be three races, and each bidder must name the three winning horses, and all who do so share the pool. The question was whether such transactions were gambling, under the statute. The defendants appealed.

BRYAN, J., in delivering the opinion of the court, said: The meaning of the law which consigns a man to prison, or deprives him of his property, should be plain and obvious and easily understood by an ordinary capacity. Betting money is not an offence by the common law, and is punishable only in the particular cases which are made criminal by statute. Horse races have been in some measure favored by our legislature. By § 18, art. 56, of the code, the clerks of the circuit courts are authorized to issue licenses for the sale of spirituous and fermented liquors at horse races. And the Maryland Jockey Club was incorporated by the act of 1872, c. 55. Persons may attend the races and hazard their money as freely as they choose by betting on the horses, and they will not thereby become amenable to any legal penalties. The Jockey Club holds its meetings for these races under the authority given by the legislature in its charter of incorporation. If betting money on the horses were regarded by the law as playing at a game of chance, the race course would be "a place of gambling" within the meaning of the statute, and the Jockey Club would be indictable for maintaining it. But we have seen that they have the express authority of the legislature for these races. It may be urged that wagering money on a horse race is as immoral and as evil in its consequences as playing at a gaming table; and that these pool rooms present to the idle and dissipated all the temptations which belong to any form of gambling. But such arguments do not justify us in extending the statute beyond the bounds of a just and reasonable construction of its language. It is for the legislature to make such changes in the law as it may consider the public good to require. Our functions are limited to interpreting and enforcing the legislative will when it has been declared; and it would be very unwarrantable in us to permit ony private sentiments of our own to affect the construction which we give to these statutes. In the argument of this case at the bar we were referred to many authorities from the courts of other States and to some from England. We have given them attentive consideration; but as the statutes which they construe are very different from our own, we have not been able to derive much aid from these sources, even if we were disposed to follow the opinions of the learned judges. We think that the selling of the tickets and the keeping of the pool rooms mentioned in the evidence were not violations of the law.

Judgment reversed.

Supreme Court Oregon.

GLAZE *vs.* LEWIS.

1. *Lien: Judgment of Justice's Court; When docketed above.*—the judgment of a justice's court when docketed in the superior court, is as complete a lien on real property as a judgment of that court.
2. *Scire Facias: On Docketed Judgment of Justice's Court.*—The writ must be sued out of the superior court where the judgment of the justice's court is docketed.

Appeal from Polk county.

Appeal from an order and judgment granting leave to the respondent to issue execution on a docketed judgment of the justice's court.

LORD, J.—The question involved depends for its solution upon the construction and effect to be given to the provisions of our

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statute in respect to the docketing of a justice's judgment. It is provided by the justice's code that "whenever judgment is given in a justice's court in favor of any one for the sum of ten dollars or more, exclusive of costs or disbursements, the party in whose favor such judgment is given may, within one year thereafter, file a certified transcript thereof with the county clerk of the county wherein such judgment is given, and thereupon such clerk shall immediately docket the same in the judgment docket of the circuit court." § 53, p. 469. "From the time of docketing a judgment of a justice's court, as provided in the last section, the same shall be a lien upon the real property of the defendant as if it were a judgment of the circuit court wherein it was docketed." § 54. And "where a judgment given by a justice of the peace has been duly docketed in the circuit court, thereafter it must be enforced as a judgment of such circuit court." § 61. The appellant contends that the effect of these provisions in providing for the docketing of a justice's judgment is only a statutory lien, and not to make such judgment, when docketed, in effect a judgment of the circuit court; and as a consequence, he claims that when the lien has expired by lapse of time, the effect of the docketing is gone and the judgment lapses into its former condition of a justice's judgment, which the circuit court is without jurisdiction to revive, but that if such judgment can be revived at all, it must be done by the justice's court. It is quite certain that a justice's court is without the power to revive a judgment so as to create a lien. Its judgments only have this effect when docketed as prescribed by the section cited, and if the argument insisted upon is tenable, when the lien expires the judgment cannot be revived. The provisions of the sections referred to are, in substance, that when such judgment is docketed, "the same shall be a lien, etc., as if it were a judgment of such circuit court." The words, "as if it were a judgment of such circuit court." seem intended to place such a judgment when docketed upon the same footing in all respects as to the lien creditor, with a judgment of the circuit court, and, as "thereafter it must be enforced as a judgment of such circuit court," it would seem, when docketed, to have the same effect as a judgment of the circuit court. Under a statute providing that "such judgment shall have the same effect as a judgment rendered in the circuit court, and may, in the same manner, be enforced," etc., it was held that a transcript properly certified, filed and docketed, renders the judgment thus transcribed and certified a judgment of a court of record from the time of such filing and docketing; thus changing in some degree its nature, and very materially the rights, power and liabilities of the parties to it. Jewett v. Bennett, 3 Mich., 199, 200. When docketed in the circuit court, it has the same effect as a judgment rendered in that court, and is to be enforced, cancelled or discharged, and is affected by the Statute of Limitations in the same way. Arnold v. Thomson, 19 Mich., 333; Davison v. Elliott, 9 Ib., 252. It is from the date of the docketing of a judgment of the circuit court that it becomes a lien upon the real property of the defendant. Civil Code, § 263. And when a properly certified transcript of a judgment of a justice's court is filed and docketed "in the judgment docket of the circuit court," the same becomes a lien upon the real property of the defendant from the date of docketing such judgment, and it stands upon the same footing as a judgment of the circuit court. When, therefore, it was sought to revive the judgment, the circuit court had jurisdiction in the premises, and the application for leave to issue execution was properly made to it.

Judgment affirmed.

The Courts.

SUPREME COURT OF THE DISTRICT OF COLUMBIA

GENERAL TERM.

Sept 21 and 22, 1885.

Strong v. District of Columbia. Arguments on exceptions continued. Sept. 23, 1885.

Same. Arguments to exceptions concluded and case submitted. Sept. 24, 1885.

Smith v. Whitney. Arguments begun.

Sept. 25, 1885.

Same. Petition dismissed.

Adjourned sine die.

IN EQUITY.—New Suits.

Sept. 21, 1885.

9622. Joseph A. Smith v. Wm. C Whitney et al. To prohibit court martial of Joseph A. Smith. Com sols, Hunton and Chandler.

9623. C. F. E. Richardson et al. v. Sophia L. Little et al. Com sols, Richardson and Chesney.

Sept. 22, 1885.

9624 Wm. E. Clayton v. Griffin S. Reed. To enforce mechanic's lien. Com sol, M. N Richardson.

9625. Francis T. Bowler v. Hilda Bowler. For divorce. Com sol, W. W. Boarman.

9626. Joseph R. Hertford v. Benjamin H. Waters. To sell, &c. Com sol. C. Storrs.

Sept. 23, 1885.

9627. Ellen W. Hodges v. Abraham Hodges. Divorce. Com sol, Fred W. Jones.

9628. John Kelly et al. v. Wm. H. Wilson et al To quiet title and for conveyance. Com sols, Hillyer & Ralston.

9629. Mary E Langley v. John M Langley et al. Partition by sale. Com sol, George E. Harris.

Sept. 24, 1885.

9630. William H. Green v. Kate Green. For divorce. Com sol, A. K. Browne.

9631. Joseph R. Hertford v. Philip Richardson et al. Judg't cred. bill. Com sol, C. Storrs.

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CIRCUIT COURT.—New Suits at Law
Sept. 21, 1885.

26389. John McMahon v. The Washington Brick Machine Co. Appeal. Defts atty, W. F. Mattingly.

26390. Birney & Birney v. The Upper Potomac Steamboat Co. Acct., $575. Pliffs atty, P. P.

Sept 22, 1885.

26391. The U. S., for the use of George E. Noyes, v. Wm. E. Dennison et al. Bond $125.28. Pliffs attys, Hine & Thomas.

26392. John Wells v. Celestia A Smith et al. Damages, $20,000. Pliffs atty, J. McD. Carrington.

Sept. 23, 1885.

26393. The U. S, to the use of Franklin H Mackey, guardian, v. Fannie C. Bassett, adm'x. Bond, $1500. pliffs atty, F. H. Mackey.

26394. Edward Flaherty v. The Washington Brick Machine Co. Appeal. Defts atty, W. F. Mattingly.

26495. Tenney & Sons v. Veale & Leigh Acct., $285.77 Pliffs atty, R. P. Jackson.

26396. The United States of America v Collier C Frayser et al. Bond, $200. Pliffs atty, A. S. Worthington

Sept 24, 1885.

26397. Albert C. Barnes v Moses Madry. Judgment of Justice Hall, $67.23. Pliffs atty. C. C. Cole

26398. Anna W. Tarbell v. Moses Madry et al. Judgment of Justice Hall, $30. Pliffs atty, C. C Cole.

26399. J. A. Fritter & Co. v. Patrick Foley. Certiorari Defts atty, Oscar Nauck.

PROBATE COURT.—Justice Cox.
Sept. 25, 1885.

Estate of Francis Madison. Decree appointing John S. Butler collector. Bond, $10,000.

Estate of Jacob Deible. Order of publication issued.

Estate of Wm. B. Compton. Order appointing William Dickson administrator and guardian. Bond, $10,000.

Estate of Andrew Roth. Order appointing Mary A Roth guardian of Lawrence F. Roth. Bond, $1000.

In re Charles E. Hunt, infant. Rule on Walter C. Hunt to show cause.

Estate of Thornton Yates. Release of executor granted on certain conditions.

Estate of Carl G. Freudenberg. Letters testamentary issued to to Annie K. Freudenberg. Special bond, $10,000

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. September 25th, 1885.

In the case of William R Smith and John F. Ennis, Administrators of Mary M. Cameron, deceased, the Administrators aforesaid have, with the approval of the court, appointed Friday, the 16th day of October, A. D. 1885, at 11 o'clock a. m, for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrators will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 39 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 26th day of September, 1885.

ELLEN M. HODGES v. ABRAHAM HODGES. } No. 9627. Eq Dock. 25.

The marshal having returned the defendant "not to be found," on motion of the plaintiff, by Mr Fred. W. Jones, her solicitor, it is ordered that the defendant, Abraham Hodges, cause his appearance to be ennered herein on or before the first rule-day occurring forty days after this day; otherwise this cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.

A true copy. Test: 39 R. J MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Carl G. Freudenberg, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 25th day of September, next; they may otherwise by law be excluded from all benefit of the said estate,

Given under my hand this 25th day of September 1885.

ANNIE K. FREUDENBERG,

F. P. B. SANDS; Solicitor. 39 Executrix.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 23d day of September, 1885.

SARAH R. WILLIS v. JOHN J. WILLIS. } In Equity. No. 9600.

For divorce on the ground of drunkenness and cruelty.

On motion of the plaintiff, by Charles and William B. King, her solicitors, it is ordered that the defendant, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

A. B. HAGNER

A true copy. 39 Test: R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 23d day of September, A. D. 1885.

FRANCIS T. BOWLER v. HILDA BOWLER. } No. 9625. Eq. Dock 25.

Application for divorce on the ground of adultery.

On motion of the plaintiff, by Mr. Wm. W. Boarman, his solicitor, it is ordered that the defendant, Hilda Bowler, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

Provided a copy of this order be published once a week for three successive weeks in the Washington Law Reporter prior to the expiration of the said forty days.

A. B. HAGNER.

True copy. Test: 39 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. September 26th, 1885.

In the case of Herman J. Schulties Administrator of Jacob Eugen Reghenan, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 16th day of October, A. D 1885, at 11 o'clock, a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 93 H. J RAMSDELL, Register of Wills.

CHAS. A. WALTER, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business. September 25th 1885.

In the case of Charles Wheatley, Samuel E. Wheatley and Walter T. Wheatley, Executors of Francis Wheatley, deceased, the executors aforesaid have, with the approval of the court, appointed Friday, the 16th day of September A. D 1885, at 11 o'clock a m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares(or legacies)or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Excutors will take the benefit of the law against them. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 39 H J. RAMSDELL, Register of Wills

GORDON & GORDON, Solicitors.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business.

In reEstate Thomas H. Evans, deceased.

Upon consideration of the petition of Sarah T. Evans for Probate and record of the last Will and Testament of Thomas H. Evans, deceased, and for Letters Testamentary, it is, this 18th day of September, 1885, ordered, adjudged and decreed, that William J Evans, Edward E Evans and Charles A. Evans, of the next of kin of the deceased, and all other persons interested, be notified by publication in the Washington Law Reporter once a week for three weeks, of said petition, and to appear in Court on the 9th day of October, 1885, and show cause if any they have, why said will should not be admitted to probate and record, and Letters Testamentary be granted as prayed by said petitioner.

W. S. COX.

A true copy. Test: 39 H. J. RAMSDELL,
September 21st, 1885. Register of Wills, D. C.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of Henrietta P. Plant, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of September, 1885.

GEORGE H. PLANT,
Administrator c. t. a.

CHAPIN BROWN, Solicitor. 39

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 25th day of September, 1885.

JENNIE CATHCART
v. } No. 9597. Eq Doc.
CHARLES H. KNIGHT et al.

On motion of the plaintiff, by Mr H. B. Moulton, her solicitor, it is ordered that the defendant, Elizabeth M. Dailey, cause her appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
True copy. Test: 39 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia. the 25th day of September, 1885.

ALICE L. SANBORN
v. } No. 9472. Doc 24.
DANIEL L. SANBORN

Application for divorce on the ground of desertion.

On motion of the plaintiff, by Mr. H. B. Moulton, her solicitor, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B HAGNER, Justice.
A true copy. 39 Test: R. J. MEIGS, Clerk

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Cyrus S. Richards, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 23d day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 23d day of September, 1885.

CHARLES H. RICHARDS,
MARIA W. RICHARDS,
G. W. BALLOCH Solicitor. 39 Executors.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. 25th September, 1885.

In the matter of the Estate of John A. B. Leonard, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament dated Nov. 15, 1870, and for Letters Testamentary on the Estate of the said deceased has this day been made by Francis De P. N. J. Leonard.

All persons interested are hereby notified to appear in this court on Friday the 30th day of October next at 12 o'clock, m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testimentary on the estate of the said deceased should not issue as prayed. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER. Justice.
Test: 39 H. J. RAMSDELL, Register of Wills.
REGINALD FENDALL, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. September 25th, 1885.

In the matter of the Estate of Jacob Deihle, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Max Luchs.

All persons interested are hereby notified to appear in this court on Friday the 16th day of October next, at 11 o'clock, a. m., to show cause why the said Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter and The Evening Star previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 39 H. J. RAMSDELL, Register of Wills.
CHARLES D. FOWLER, Solicitor.

Legal Notices.

CHANCERY SALE OF IMPROVED AND UNIMPROVED PROPERTY ON THE EAST SIDE OF THE SEVENTH STREET TURNPIKE, NEAR THE HOWARD UNIVERSITY, BETWEEN TRUMBULL STREET AND HOWARD AVENUE.

By virtue of a decree of the Supreme Court of the District of Columbia, passed in the consolidated Equity Causes No. 6354, wherein Oliver B. Magruder is complainant and John W. Beall et al defendants, and No 8674, wherein Mary V. Branigan et al. are complainants and Oliver B. Magruder et al defendants, the undersigned trustees will sell at FIVE O'CLOCK P. M., on FRIDAY, THE TWENTY FIFTH DAY OF SEPTEMBER A. D. 1885, the following described property, in parcels, according to the plat filed in said Cause No. 6354, viz.: All that part of a tract of land in Washington county in the District of Columbia, known as Mount Pleasant, and being a part of Lot No. Three (3) in the division of said tract, which was allotted to David Peter, said part or parcel of land fronting on the eastern boundary of the Seventh street turnpike leading to Rockville, and containing one square acre of land, bounded on the north by W. D. Beall's purchase, and on the south by that sold to Aaron M. Gattrell, together with all the improvements. Said property was subdivided into lots of 32 to 37 feet front, with a depth of 208. One of said lots is improved by a large Three-story Brick Dwelling and out-house.

Terms of sale: One-third of the purchase money cash in hand, and the remainder in equal installments, payable in twelve and twenty-four months from the day of sale, the said deferred payments bearing interest at the rate of six per centum per annum from date of sale. All conveyancing at cost of purchaser. Taxes to be paid by the Trustees out of the proceeds of sale. A deposit of $50 on each lot required on day of sale. If the terms of sale are not complied with in ten days, the trustees reserve the right to resell the property at the risk and cost of the defaulting purchaser.

GEORGE E. HAMILTON,
FRANKLIN H. MACKEY,
Trustees.
THOS J. FISHER & Co., Auctioneers. 37.2

☞THE ABOVE SALE IS POSTPONED UNTIL FRIDAY, the SECOND DAY OF OCTOBER, at the same hour and place.

GEORGE E. HAMILTON,
FRANKLIN H. MACKEY,
39-1 Trustees.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. The 17th day of September, 1885.

GEORGIANA STEWARD
v. } 9603. Equity Docket 25.
JAMES D. MANKIN, Adm'r. &c.

Upon consideration of the motions of the counsel for the plaintiff, it is hereby ordered, adjudged and decreed, that the style and bill of complaint in the above-stated case be amended by adding to the description of the defendants, the unknown heirs of the said Jabez Pittard, deceased.

And also that publication be made requiring the said unknown heirs to cause their appearance to be entered in the above-stated case on or before the first rule-day occurring forty days after this date.

W. S. COX, J.
A true copy. Test: 39 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 24th day of September, 1885.

HELLEN J. DURFEE
v. } In Equity. No 9297.
GEORGE H. DURFEE.

Application for divorce on the ground of desertion.

On motion of the plaintiff, by Messrs. Robert R. Shellabarger and Charles S. Wilson, her attorneys, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Asso. Justice.
True copy. Test: 39 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 24th day of September, 1885.

GEORGE PLITT
v. } No. 9601. Equity Docket 25.
AMELIA PLITT.

Application for divorce on the ground of desertion.

On motion of the plaintiff, by Mr. J. Ambler Smith, his solicitor, is it ordered that the defendant, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Asso. Justice.
A true copy. Test: 39 R. J. MEIGS, Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

JOHN KELLY and MARGARET A. KELLY, Plaintiffs,
v.
WILLIAM H WILSON, MARY CATHARINE THOMPSON, JOHN THOMPSON, DOLLIE KENNARD, CHARLES A. CAMPBELL, FANNY CAMPBELL and ISAAC WILSON, Defendants.
} Equity. No. 9628.

The bill states that on the 25th day of November, A. D. 1858. Mary A. Campbell contracted to convey to Amon Green the south one-half by the depth of lot seventeen (17) in square six nundred and eighty-five (685), in the City of Washington and District of Columbia, and executed a deed therefor to said Green, which deed was not duly acknowledged by said Mary A. Campbell That pursuant to said contract and shortly after its date, said Mary A. Campbell surrendered possession of said premises to said Green, and that he and his successors in title, the complainants, being the present owners under him, have ever since had quiet, peaceable, open, notorious and adverse possession thereof under claim and color of title.

The bill prays for a specific performance of the contract above referred to by the due execution and acknowledgment of a deed from the defendants named in the caption, who are alleged to be the only heirs of Mary A. Campbell, to the complainants, and that complainants may have their title quieted as against said defendants, and the bill says that the defendants are non residents of the District of Columbia, ane on motion of Hillyer & Ralston, complainants' solicitors, it is, this twenty-third day of September, A. D. 1885,

Ordered, that the said defendants cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

Provided a copy of this order be published in the Washington Evening Star, once a week, for each week before the day last specified.

A. B. HAGNER, Associate Justice,
True Copy Test: 39 R. J. MEIGS, Clerk.
By M. A. CLANCY, Assistant Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of McGinnis Sands, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 19th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of September, 1885.

JOB BARNARD,
EDWARDS & BARNARD, Solicitors, 38 Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 19th day of September, 1885.

DAVID LOGAN Complainant,
v.
JAMES S. LINTHICUM et al., Defendants.
} No. 9611. Equity.

On motion of the complainant, by Messrs. Edwards & Barnard, his solicitors, it is ordered that the defendants, James S. Linthicum, Sallie Linthicum, Edward P. Suter, Almira Suter, Samuel T. Henkle, Margaret E. Henkle, Charles E. Spalding, N. Virginia Spalding, Richard B Clark, Bertha Clark, John W. Walker, Ella Walker, and Robert R Boarman, cause their appearance to be entered herein on or before the first rule-day occuring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.
True copy. Test: 38 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 14th day of September, 1885.

GEORGIANA D. MOORE
v.
LEOPOLD F. MOORE.
} No. 9606. Eq. Doc. 25.

On motion of the plaintiff, by Messrs. Birney & Birney, her solicitors, it is ordered that the defendant, Leopold Frederick Moore, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.
A true copy. Test: 38 R. J. MEIGS, Clerk.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscribers of the District of Columbia have obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration c. t. a on the personal estate of William Walter, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscribers on or before the 16th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 16th day of September, 1885.

KATHARINA WALTER,
38 CHARLES WALTER,
S. H. WALKER, Solicitor. Administrators c. t. a.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business. September 18th, 1885

In the matter of the Will of Roberta W. Bell, late of Washington D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Charles J. Bell, and Gardner G Hubbard.

All persons interested are hereby notified to appear in this court on Friday, the 9th day of October next at 11 o'clock, a. m., to show cause why the said Will should not be proved and admited to Probate and Letters Testamentary on the estate of said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.
Test: 38 H. J. RAMSDELL, Register of Wills.
JAMES H. SAVILLE, Solicitor.

THIS IS TO GIVE NOTICE,

That the subscribers of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Joseph Trimble, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 11th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 11th day of September, 1885.

JAS. TRIMBLE,
39 MARY BLAKELY,
JUDSON T. CULL, Solicitor. Executors.

THIS IS TO GIVE NOTICE:

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Clifton B. Scott, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of September next: they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of September, 1885.

FILLMORE BEALL, Solicitor, 39 JANE C. SCOTT.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 21st day of September, 1885.

CHARLES A. MANDLEY, Plaintiff,
vs.
LAVINIA MANDLEY, Defendant
} Equity, No. 9563.

Petition for divorce on the ground of desertion

On motion of the plaintiff, by Mr. T. J. Mackey, his solicitor, it is ordered that the defendant, Lavinia Mandley, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.
A true copy. Test: 39 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 21st day of September, 1885.

ALICE V. LEE
v.
WILLIAM F. LEE.
} Equity, No. 9613.

On motion of the plaintiff, by Mr. T. J. Mackey, her solicitor, it is ordered that the defendant, William F. Lee, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default

By the Court. W. S. COX, Justice.
A true Copy. Test: 39 R. J. MEIGS, Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. September 8, 1885.

In the case of Jesse B. Wilson, Executor of Clark Mills, deceased, the Executor aforesaid has, with the approval of the Court appointed Friday, the 2d day of October, A. D. 1885, at 11 o'clock, a. m., for making payment and distribution under the court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 37 H. J. RAMSDELL, Register of Wills.
T. A. LAMBERT, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

ANNIE L. REED et al.
v.
GERTRUDE R. WILSON et al. } Equity. No. 9098.

Amos Webster and John B. Larner, trustees appointed by the Court in a decree passed herein, on the 10th day of November, 1884, to sell the real estate in these proceedings mentioned, to wit: Lot numbered twenty-four (24), being a subdivision of part of original lot number one (1) and part of original lot number thirty-three(33) in square number one hundred and twenty-seven (127), beginning for the same at a point on the west side of Seventeenth (17th) street west sixty (60) feet from the southeast corner of said square and running due west eighty-six (86) feet; thence due south thirty (30) feet; thence due east eighty-six (86) feet; thence due north thirty (30) feet along the west side of Seventeenth street west, to the place of beginning, as the same is described on the plat or plan of the City of Washington, District of Columbia, having reported to the Court that after complying with all the requirements of said decree they offered said real estate for sale at public auction in front of the premises, but could not sell the same; that since said endeavor to make a sale of said property as aforesaid they have received an offer to purchase said real estate from one J. Ford Thompson, at private sale, at and for the sum of ten thousand five hundred dollars ($10,500) on the following terms, to wit One-third of said purchase-money in cash, and the balance in one, two and three years, with interest at the rate of six per centum per annum until paid, secured by deed of trust on the premises:

It is, this 9th day of September, 1885, therefore, ordered and decreed that the said offer of said J. Ford Thompson be, and the same is, hereby accepted And it is further ordered and decreed that the sale of said property to said Thompson be, and the same is, hereby ratified and confirmed, unless cause to the contrary be shown on or before the 1st day of October, 1885.

Provided a copy of this order be published in the Washington Law Reporter, once a week for three weeks before the said 1st day of October, 1885.

W. S. COX, J.
A true copy 37 Test: R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 8th day of September, 1885.

JOHN M. YOUNG
v.
ARKANSAS G. MARKS et al } No 9579. Equity Doc. 25.

On motion of the plaintiff, by Messrs. Edwards & Barnard, his solicitors, it is ordered that the defendants, Johanna R. Dilley, William D. Mann, and Mary S. Mann, his wife, Edward J. Todd and Catharine Todd, his wife, Samuel M. Pearson, H. W. Harris, John Sherman and A. Herr Smith, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. W. S COX, Justice.
A true copy Test: 37 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Dennis F. Ryon, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 31st day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this first day of September, 1885.
L. CABELL, WILLIAMSON, Sol'r. 36 GRACE A RYON.

Legal Notices.

CHANCERY SALE OF THE FRAME HOUSE AND LOT ON C STREET, BETWEEN FOURTH AND FIFTH STREETS SOUTHEAST, BEING THE PREMISES KNOWN AS 414 C STREET SOUTHEAST.

By virtue of a decree of the Supreme Court of the District of Columbia, passed September 14th, 1885, in Equity Cause No. 9503, Docket 25, wherein J. I. Immobordorf and others are plaintiffs and John Hitz and others are defendants, I will sell at public auction, in front of the premises, on THURSDAY, THE EIGHTH DAY OF OCTOBER, A. D. 1885, at FIVE O'CLOCK P. M., the following described real estate, situate in the City of Washington, District of Columbia, to wit: All that certain piece or parcel of land and premises known and distinguished as the east half (½) of lot numbered two (2), in square numbered eight hundred and nineteen (819), together with the Improvements, &c.

Terms: One-third (⅓) of the purchase money in cash, and the balance in two equal installments payable six (6) and twelve (12) months from date, the deferred payments to be evidenced by promissory notes bearing interest from the day of sale and to be secured by deeds of trust on the property sold, or all cash at the option of the purchaser. A deposit of one hundred dollars ($100) will be required at the time of sale. All conveyancing, &c., at the cost of the purchaser. If the terms of sale are not complied with within ten days from the sale the Trustee reserves the right to re-sell the property at the risk and cost of the defaulting purchaser.

R. D. MUSSEY,
38-3 Trustee,
W. C. DUVALL, Auctioneer, 925 F Street. 508 5th st. n.w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 16th day of September, 1885.

MARIAN CHASE, Petitioner,
v.
MELVILLE CHASE, Respondent. } No. 9620. Equity Docket.

On motion of the petitioner, by Messrs. Riddle, Davis & Padgett, her solicitors, it is ordered that the respondent, Melville Chase, cause his appearance to be entered herein on or before the first rule-day, occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.
A true copy. 38 Test: R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

MARY FURMAGE ET AL.
v.
JANE R. FURMAGE ET AL. } No. 9267. Eq. Doc. 24.

Irwin B. Linton, trustee in the above cause, having reported to the Court that, pursuant to the decree therein, he sold at public auction, on June 30th, 1885, sub-lot 14, in square 139, in the City of Washington, in the District of Columbia, to John A Prescott, for the sum of $3710, being at the rate of $1.40 per square foot:

It is this 1st day of September, 1885, by the Court ordered that the said sale be ratified and confirmed unless cause to the contrary be shown on or before the 1st day of October, 1885.

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to said last-mentioned day.

WM M. MERRICK, A. J.
A true copy. Test 36 R J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE

That the subscribers, of the District of Columbia have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of August Muller, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscribers, on or before the 11th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 11th day of September, 1885.
CHARLES MADES,
HENRY MILLER,
37 Executors.
EDWVRDS & BARNARD and S. T. THOMAS, Solicitors.

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Legal Notices.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William H Cross, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 29th day of December next; they may otherwise by law be excluded from all benefit of the said estate
Given under my hand this 29th day of December, 1884.
MARY A. CROSS,
LEMUEL FUGITT, Solicitor. 35 Administratrix.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John P. Ringgold, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of September next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 30th day of September, 1884.
MARY C. RINGGOLD
35 Administratrix.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Lena Relay late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 12th day of July next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 12th day of July, 1884.
THOMAS ROBINSON,
35 Executor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
In the matter of
JOSEPH P. HERMAN, Bankrupt. } No. 303. In Bankruptcy.
Charles Walter, Assignee in this cause, having reported a sale of part of the original lot eight (8) and ten (10) in square five hundred and thirty-five (535) situate in the City of Washington, in the District of Columbia, to Abraham Herman, for $400, upon the terms and conditions mentioned in said report:
It is, this 1st day of September, 1885, ordered, adjudged and decreed, that said sale be confirmed unless cause to the contrary be shown on or before the 2d day of October, 1885.
Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said day.
By order of the Court. WM. M. MERRICK, Justice.
A true copy. Test: 36 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Patrick J. Downing, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 21st day of August next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 21st day of August, 1885.
E. M. GILLETT, Sol'r. 35 MARGARET J. DOWNING

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 12th day of September, 1885.
JOHN W. P. MYERS v. MAURICE J. ADLER et al. } No. 9568. Equity Docket 25.
On motion of the plaintiff, by Mr. Franklin H. Mackey, his solicitor, it is, this 12th day of September, A. D. 1885, by the Court ordered that the defendant George M. Berry, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.
By the Court. CHARLES P. JAMES, Justice.
True copy. Test: 37 R. J. MEIGS, Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Holding a Special Term for Orphans' Court Business. September 8, 1885.
In the case of Charles M. Matthews, Executor of Grafton Tyler, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 9th day of October, A. D. 1885, at 11 o'clock, a. m., for making payment and distribution under the Court's direction and control; when and where creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day
Test: 37 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. September 11th, 1885
In the matter of the Estate of William Wallace Greenfield, late of Washington, District of Columbia, deceased.
Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Eliza Emma Greenfield.
All persons interested are hereby notified to appear in this court on Friday, the 2d day of October next at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. W. S. COX, Justice.
Test; 37 H. J. RAMSDELL. Register of Wills.
GORDON & GORDON, Solicitors

THIS IS TO GIVE NOTICE.
That the subscriber of Cambridge, Maryland, hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Samuel Chase Barney, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 4th day of September next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 4th day of September, 1885.
36 S. CHASE DE KRAFFT.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
HENRY SILSBEE, Trustee, v. SARAH G. GARLAND et al } No. 7369. Eq. Doc. 20.
Joseph J. Darlington and Robert Byrd Lewis, trustees in the above cause, having reported to the Court that, pursuant to decree therein, they sold at public auction on July 3d, 1885, part of lot numbered thirteen (13) in reservation B, in the City of Washington, in the District of Columbia, in their report filed herein more particularly described, to Jonathan B H. Smith, for the sum of $8,600.
It is, by the court this first day of September, 1885, ordered that the said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 2d day of October, 1885.
Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to said last-mentioned day.
WM M MERRICK, A. J.
A true copy. Test: 36 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. August 28th 1885
In the matter of the Estate of William Cahill, late of the District of Columbia, deceased.
Application for the Probate of the last Will and Testament of the said deceased has this day been made by Catharine Dentz, executrix.
All persons interested are hereby notified to appear in this court on Friday, the 2d day of October next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
By the Court. WM. M. MERRICK, Justice.
Test: 36 H. J. RAMSDELL, Register of Wills.

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Washington Law Reporter

WASHINGTON - - - - - - - October 3, 1885.

GEORGE B. CORKHILL - - - EDITOR

THE case of Hinckley against the Civil Service Commissioners, brought to test the validity and constitutionality of the Civil Service Act, came to an abrupt termination in the United States Circuit Court for the Southern District of New York on last Saturday. Judge Wallace denied the application for the *quo warranto*, and, upon the counsel for the relator insisting on being heard on the merits of the case, as would appear from the report that has reached us, said in conclusion:

"I am prepared to decide this case now. I cannot stay here all day and hear the discussion of abstract principles. The question is, can you maintain this action? Oh, I can't hear any more. I won't hear any more. When you made your application I had a strong suspicion that the case could not be presented in this manner, but I did not feel that it was proper to dispose of it summarily, as it was presented by reputable counsel, who, I presumed, would present some precedent for their action. There is a case which you have not quoted, and which would give you some color of right, but the court took especial pains to overrule it the next time it came up. I do not think you will find any precedent in this country which recognizes the old practice of the King's Bench on which you rely. What do you allege? The relator is not even an applicant for office, and there is no reason to suppose that he ever will be. Where is the injury to his rights? I am not here to listen to abstract points. There is no law to authorize this proceeding. There is no such practice here, and the court will not attempt to coerce the officials to whom such matters belong.

"I deny the application, and if you are dissatisfied you must find your remedy by an appeal."

WILLIAM T. HORNADAY, the chief taxidermist of the National Museum who spent several years in Borneo, in a work entitled "Two Years in the Jungle," speaking of the phenomenal honesty of the Dyaks, the natives of Borneo, says:

"I have never heard of a single instance of theft from any European, Malay or Chinaman committed by a Sea or Hill Dyak. Where else but among the Dyaks will a traveler dare to trust a cart load of boxes and packages, none of them securely fastened, all filled with scores of trifles, any one of which would be dear to a native's heart, in the center of a village of fifty strange natives, with no one to watch for thieves? You can do this among the Dyaks, and lose not one cent's worth. Even the empty tin cans I threw out of the house were brought to me and shown before they were appropriated." An equally astounding Dyak trait is their inflexible probity in the payment of debts. "If the people of a village want goods, a foreign trader will give them his whole cargo, if he can get them to accept it, in exchange for a promise to pay in jungle produce, to be afterward collected. The day for full settlement is named by the head man, and by that time the debts are all paid."

PROF. DWIGHT, in an address to the graduating class of the Columbia Law School, June, 1885, said:

"I have at last reached the shyster. This is an odious and abhorrent word, and scarcely has a place in a well-ordered dictionary. Still, we all know who and what he is. We mention him only to denounce him, and set a mark upon him, so that any one meeting him may avoid him. He is the worst available instance of the doctrine of development. He comes up from the vilest substances, stained and still sticky, and in that condition strives to force himself into the society of decent members of an honorable profession. Out upon him! for he steals the seamless mantle of justice to cover his gross enormities. He is frequently to be found in the vicinity of criminal courts, partaking

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of the manners and habits of those with whom he most intimately associates. In itself there is nothing degrading in the practice of the criminal courts. All depends on the way in which the practice is conducted. There are men of the shyster class everywhere, too low to be worthy of notice. Let us adopt Virgil's advice to Dante, 'and simply look and pass on.'"

IN Cline v. State (1 Northeastern Rep., 28), the Supreme Court of Ohio held, following among other cases, People v. Robinson, 2 Parker Cr. Reps., 235, that evidence of intoxication is competent to negative criminal intent, where intent is material and the evidence tends to show that the defendant was so much intoxicated that he could not have formed the intent.

Supreme Court District of Columbia

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

FLANNERY
vs.
THE BALTIMORE & OHIO RAILROAD CO.
LAW. No. 23,444.

Decided June 1, 1885.
Justices COX, JAMES and MERRICK sitting.

When the agents of a railroad company are guilty of malicious or intentionally negligent conduct, so as to amount to a reckless disregard of the rights of passengers, a jury may award ememplary damages; but the court will interfere when such damages are grossly excessive.

THE CASE is stated in the opinion.

H. O. & R. CLAUGHTON for plaintiff:

Whether exemplary damages is merely compensation, or punishment, it is now universally recognised and established that in all actions on the case for tort a jury may inflict them. 2 Sedgwick, 456 (side page) *et seq.* to 467; Milwaukee R. R. Co. v. Armo, 1 Otto, 465; Day v. Woodsworth, 13 How., 363; Phila., W. & B. R. R. Co. v. Quigley, 21 How., 202; Valtz v. Blackmar, 64 N. Y., 440; Hoadley v. Watson, 45 Vt., 289; McWilliams v. Pragg, 3 Wis., 429; Hawes v. Knowles, 114 Mass., 518.

Criminal indifference to duty amounts to "evil motive." B. & Y. Turnpike Co. v. Boone, 45 Md., 344; Magee v. Holland, 3 Dutch, 86.

Gross negligence. Railroad Co. v, Lockwood, 17 Wall., 357; Prickett v. Cook, 20 Wis., 358.

Principal for default of agent, without authorization or ratification. Goddard v. Grand Trunk R. R. Co., 57 Me., 202; Atlantic and G. W. Co. v. Dunn, 19 O., 162; 86 Ill., 455; 114 Mass., 518.

If the jury find a proper case for exemplary damages, the jury have the right to fix the amount, which will not be disturbed unless so disproportionate as to warrant the belief that the jury must have been influenced by partiality or prejudice. Hilliard on New Trials, 562, *et seq.*

In general, where there is no certain measure of damages; the court will not disturb the verdict, except for prejudice, passion, or corruption in the jury, and where the verdict is palpably against the evidence. Id., 563, 567, 578.

If the conductor authorizes another conductor in the service of the company, and wearing the uniform of the company, to act for him, the company is liable for the negligence of such employee. Carson v. Leathers, 57 Miss., 650.

If he had no power to stop the train, it is admitted that it was his duty to notify the conductor of the assault. It amounts to the same thing.

The case in 34 Connecticut, Flint v. Transportation Co. was a case of exemplary damages, and was decided by a U. S. court. 13 Wall., 3.

R. T. MERRICK for defendant.

Mr. Justice Cox delivered the opinion of the court.

This is a case in which the plaintiff went upon the cars of the defendant and on first attempting to enter was forbidden to do so by another person. He appealed to the conductor, who took him into the car and gave him a seat. Immediately afterwards he was assaulted by this other man, and he says he appealed to the conductor for protection, but instead of protecting him he says the conductor insulted him, and left him to his

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fate, and he was ejected from the car in a rather pitiable condition.

We have gone over this case generally, and have examined the instructions given by the court, and do not find any error in the ruling of the court on the whole question presented. One of the principal questions submitted was whether exemplary damages could be awarded by the jury in favor of the plaintiff. We are not favorable to the doctrine of exemplary damages against a corporation, but we cannot close our eyes to the fact that the Supreme Court has recognized with approval the decisions of the state courts to the effect that when the agents of a railroad company are guilty of conduct which is malicious or is intentionally negligent, so as to amount to a reckless disregard of the rights of passengers, a jury may award exemplary damages, and we think that the law, as applicable to the facts in this case, was properly presented by the court to the jury. There was evidence tending to show, in the case under consideration, that the agent of the defendant was guilty of willful and intentional neglect.

There is, however, one question still left open. A motion was made for a new trial in this case on the ground of excessive damages. That motion was overruled and and an appeal was taken which brings before us the question of excessive damages.

The jury awarded the plaintiff in this case in their verdict, damages to the amount of five thousand dollars, at least ten, if not twenty times, as much as would have actually covered all the damages he received and would have been ample compensation to him we think. All in excess of this is merely a fine imposed upon the company which goes into the pocket of the plaintiff.

It is claimed that where exemplary damages are given by a jury the court will not interfere in the matter. The court does hesitate to interfere in this respect, particularly in certain cases such as slander, libel, &c. In those cases we seldom intefere with the verdict rendered by a jury, where the damages are almost always exemplary. Still, when we think the verdict rendered, is out of all proportion to the injuries received, we feel it our duty to interfere. In this case we do not hesitate to say that we regard this verdict as grossly excessive. We think that five hundred dollars would have been an ample amount for the injury sustained, and we regard all in excess of toat amount as merely a punishment of the defendant. We have therefore concluded to grant a new trial unless the plaintiff will remit thirty-five hundred dollars of the amount awarded and let the verdict stand at fifteen hundred dollars.

Privilege of Witness.

English High Court of Justice.

LAMB *vs.* MUNSTER.

1. A witness is not bound to criminate himself.
2. Where the witness declines to answer a question on the ground that the answer may, will or might endanger him, and the court sees, from the circumstances of the case and the nature of the evidence the witness is called to give, that there is reasonable ground to apprehend danger to the witness from his being compelled to answer, and the danger is real and appreciable, the witness cannot be forced to answer the question.

The action was for libel, and the defendant, by his statement of defence, denied the publication of the alleged libel. Interrogatories being administered asking him whether he did not publish the libel, his answer was: "I decline to answer the interrogatories, upon the ground that my answer to them might tend to criminate me." A master ordered a further and better answer; but his order was rescinded by the learned judge.

FIELD, J.—I think the learned judge at chambers was right, and that the answer to the interrogatories is sufficient. The point raised is important, for the principle of our law, right or wrong, is that a man shall not be compelled to say anything which criminates himself. Such is the language in which the maxim is expressed. The words "criminate himself" may have several meanings, but my interpretation of them is "may tend to bring him into the peril and possibility of being convicted as a criminal." It is said that a man is not bound to do so. There have been various authorities on the question how the point is to be raised. Suppose a witness in the box declines to answer a question. He is asked why. He answers: "Because it may tend to criminate me." But the judge tells him that he must go further and swear that he believes the answer will tend to criminate him. He answers: "I do not know, but I believe may do so." The judge

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tells him that he must go further and say that he is advised that the answer may tend to criminate him. He perhaps replies, "I have no one to advise me in whose advice on the subject I should trust." Then it becomes the duty of the judge to look at the nature and all circumstances of the case and the effect of the question itself, to see whether it is a question the answer to which will really tend to criminate the witness. If he said, "I think it may," or "it may," or "it might," or "I believe it will," or "I am advised it will," I should not regard the form of words, but look to see whether answering would be likely to have or probably would have such a tendency to criminate, and bearing in mind the cardinal rule that a man shall not be compelled to criminate himself, I should almost prefer a man to be careful and say the answer might tend to criminate, and I should be slow to commit him to prison for not doing that which the law says he is not bound to do. In this case the tendency to criminate is evident. The statement of claim charges the defendant with the publication of a false and malicious libel, the remedy for which is either by action or indictment. It would be competent for the plaintiff after having got an answer to the interrogatories, to indict the defendant for libel, and the answer might establish the very first step the prosecutor would have to prove.

I do not think the authorities lay down any principle on which this application for a further answer can be rested. In Fisher v. Owen, 8 Ch. Div., 645, the point was only whether the question could be put, and there are many, amongst whom is Brett, L. J., who think it is a mistake to allow a man to refuse to answer on the ground that his answer might tend to criminate him, for this reason, that although a learned judge may regard the answer without being influenced by it, yet on the interrogatories and the refusal of the defendant to answer them being read to a jury, who are asked whether they can doubt that the defendant really did what he was asked about, they would at once find that they did. In Allhusen v. Labouchere, 3 Q. B. D., 654, 662, Brett, L. J., doubts whether the equity doctrine is perfectly applicable to the courts of common law. But the lord justice says: "That, however, is past controversy, and the question has been settled by the Court of Appeal." A decision of Lord Hatherley when Wood, V. C., was cited and Mr. Woollet produced a case in which there were the same words as those under discussion, but I find in the cases that the learned judges used the words such as "will," "may," or "might," indifferently, without laying any stress on the verb. I think there is no substance in the objection to the present answer, and that it is quite sufficient. It is very desirable that the rule should be in favor of the principle of law.

STEPHEN, J.—I am of the same opinion. I entirely agree with my learned brother. In every case the principle itself has to be considered, and it would not be well to lay down any kind of strict rule as to the particular form of words in which persons are to be compelled to express their opinion as to whether or not the answer to questions would criminate them. When the subject is fully examined, it will, I think, be found that the privilege extends to protect a man from answering any question which "would in the opinion of the judge have a tendency to expose the witness, or the wife or husband of the witness, to any criminal charge." Stephen's Dig. of the Law of Ev. (3d ed.), art. 120, p. 121. That is what I understand by the phrase "criminating himself." It is not that a man must be guilty of an offence, and say substantially: "I am guilty of the offence but I am not going to furnish evidence of it." I do not think the privilege is so narrow as that, for then it would be illusory. The extent of the privilege is, I think, this: the man may say, "If you are going to bring a criminal charge, or if I have reason to think a criminal charge is going to be brought against me, I will hold my tongue. Prove what you can, but I am protected from furnishing evidence against myself out of my own mouth." I do not think the cases cited go any further than this, viz., that the court which has to decide must be satisfied on the oath of the witness that he does object on that ground, and that his objection is *bona fide*. In Reg. v. Boyes, 1 B. & S., 311; 30 L. J. (Q. B.) 301, a case not cited in argument, but a somewhat remarkable one, a man called as a witness on an information for bribery refused to answer any question as to his knowledge of the defendant, on the ground that by answering he might criminate himself; a pardon under the great seal was thereupon handed to the witness, who still refusing, was compelled by the judge to answer. This ingenious point was taken, viz., that the pardon was not pleadable to an impeachment by the House of Commons, and that Boyes when he refused to answer, after the pardon was handed to him, did so under the belief of an impeachment to which the pardon would be no answer. Cockburn, C. J., says: "It was contended that a bare possibility of legal peril was sufficient to entitle a witness to protection; nay, further, that the witness was the sole judge as to

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whether his evidence would bring him into danger of the law; and that the statement of his belief to that effect, if not manifestly made *mala fide*, should be received as conclusive. With the latter of these propositions we are altogether unable to concur." But he goes on to say that "the court must see, from the circumstances of the case and the nature of the evidence which the witness is called to give, that there is reasonable ground to apprehend danger to the witness from his being compelled to answer," and also that the danger must be real and appreciable. That is on the whole the principal authority for my view of this case, that a man is not to be forced to answer any question if the witness swears that the answer "may," or "will," or "would" endanger him (I care not for the form of words in which he expresses it), and in the opinion of the judge the answer may, not improbably, be of such a nature as to endanger him. The defendant in the present case is asked whether he has published a libel, and has refused to answer on the ground that it "might" endanger him, and I think that a person who wished to annoy him and cause expense might endanger him, and I cannot say it is an improbable contingency. Having regard to the authority I have cited, it seems to me that a man may say, "I think the answer will tend to criminate me," meaning thereby "would tend to bring a criminal prosecution against me for a crime of which I am in fact innocent, but of which I might on the facts be very probably accused."

Order affirmed.

Supreme Court Pennsylvania.

MERKEL'S APPEAL.

Testator bequeathed as follows: "I give and bequeath to my beloved wife Susanna my remaining personal property, it may be money or whatever kind it will, to her full ownership, so long as she doth live. Further, I recommend that my hereafter named executor shall see that her money does not become lost." The wife survived the husband four years; at her death the personal estate still remained in the hands of her husband's executors. *Held*, that on her death the property went to her administrators, and not to the next of kin of her husband.

Appeal of J. George Merkel and Edwin M. Shollenberger, administrators of Susanna Leibelsperger, deceased, from the decree of the Orphans' Court of Berks county.

PAXSON, J.—This contention arises out of the following clause of the will of Philip Leibelsperger, deceased: "I give and bequeath to my beloved wife, Susanna, my remaining personal property, it may be money or whatever kind it will, to her full ownership, so long as she doth live. Further, I recommend that my hereafter named executor shall see that her money does not become lost."

Mrs. Leibelsperger survived her husband over four years. At her death the personal estate still remained in the hands of her husband's executor, she having drawn a portion only of the interest. The *corpus* thereof was claimed by her administrators, who are the appellants, and by the next of kin of her husband, who are the appellees. The auditor awarded the fund to the appellants; the court below, upon exceptions filed, reversed the auditor, and awarded the fund to the appellees.

The language of the will above quoted is ample to vest the personal estate of the testator absolutely in his widow. It is a gift for life, without any limitation over, and without the intervention of a trustee. These is a line of decisions in this State which holds that such a bequest is absolute. Smith's Appeal, 11 Har., 9; Brownfield's Estate, 8 Watts, 465; Diehl's Estate, 12 Cas., 120; Sichmitter's Appeal, 9 Wright, 365; Grove's Estate, 8 P. F. S., 429. Authorities might be multiplied were it necessary.

We must give effect to the language above cited, unless, from the whole context of the will, it clearly appears that the testator intended to limit his widow to a life interest in the personal estate. We say clearly appears, for it is not our purpose to grope for or guess at the testator's intention.

It is obvious that his wife was the first object of the testator's bounty. They were childless, and left no lineal descendants in any degree. It was the more natural, therefore, that he should provide liberally for his wife. The bequest to her is the first in order of time in the will. Next follows a devise to his wife of a small tract of woodland, "As her property, as long as she doth live, to have the right to dig thereon for ore and to retain the revenues; she also dare take wood therefrom as much as she needs for her use, it may be of which kind it will, nevertheless she can sell it if she wishes."

No question is raised as to whether she took a life estate or a fee in this woodland, and it will not be discussed here, further than to remark, that it furnishes no ground to say that the testator intended an intestacy as to the personal estate.

Next follows a bequest to his niece, Marietta Leibelsperger, of $3,000, to be paid upon the death of his wife; but in case of the death of said niece, then to her children, and, in default of children, to her brothers and sisters then living.

Then follows a devise to Jacob Leibelsper-

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ger (a nephew) of a valuable farm, he paying thereout the sum of $7,000 to certain nephews and nieces; after which there are several unimportant provisions intended for the comfort of his widow.

It is difficult to see in this, and there is nothing else, an intention to limit his widow to a life estate in the personal property.

The recommendation to his executor to see that his widow's money does not become lost, are precatory words, and since Pennock's Estate, 3 Harris, 263, have never been held sufficient to convert a devise or bequest into a trust. It does not take from the widow her control of the *corpus*, and the fact that she allowed it to remain in the hands of the executor, who appears to have been a prudent person, has no significance.

Much stress was laid upon the circumstance of the legacy to Marietta Leibelsperger. This legacy, as before stated, was not to be paid until after the death of the widow, and it was argued that if the widow was to have all the personal estate, free from any trust, how was this legacy to be provided for? The answer to this is not difficult. The widow was to have all the personal estate left after payment of debts and other bequests contained in the will. The personal estate was the natural and proper fund for their payment. There would have been no question about this had the bequest to the widow, which is practically of the residue, been inserted at the end of the will, instead of at the commencement. As was said by Chief Justice Sharswood, in Fox's Appeal, 39 Leg. Int., 296: "The order in which the devises are made in a will are rarely of much importance. The legacy to the testator's wife's niece of the interest of $1,000, . . . as well as the specific bequest of the old family clock to my oldest nephew or niece living, though subsequent in order to the devise of all his real and personal estate to his wife, were clearly gifts preceding it. The will ought to be read as if they were actually written before it. Then the gift to the wife is only that which remains."

So we say here. The bequest to the widow should be read as if actually written at the end of the will. She then takes the "remaining personal property;" that is to say, remaining after other bequests which were properly payable out of the personal estate; of such was the legacy to Marietta Leibelsperger; as that was not payable until after the death of the widow, the interest of it would belong to the latter, and the executor would have been justified in retaining that sum out of the personal estate to meet this legacy, paying the interest to the widow in the meantime. To this extent there was an implied trust in the will, but no further. The executor was not in any legal sense a trustee for the widow as to the residue of the personal estate.

The fact that the personal estate was much larger than the widow, with her simple tastes and habits of economy required for her support, and that, in point of fact, she used but a small portion of the income, is not important.

There is nothing upon the face of this will to indicate that the testator intended to die intestate as to the residue of the personal estate, and such intent is never to be presumed.

We find nothing in the will to control the legal effect of the language used in the bequest to the widow. Under the intestate laws she would have been entitled to one-half the personal estate absolutely, and one-half of the income of the real estate. In the absence of any expressed contrary intent, we must assume he intended to give her a fair equivalent for this. The collateral heirs say she brought him nothing in the way of estate; we do not know how this is, but we do know that the collateral heirs brought him nothing, and we have a right to presume that his wife, by her care and thrift, aided him in accumulating his estate, and nursed and cared for him in his sickness. He speaks of her in his will as his "beloved wife." She was evidently the principal object of his bounty, as well as of his affection. We are of opinion that she was entitled to the remaining personal estate absolutely.

The decree is reversed at the costs of the appellees, and it is ordered that distribution be made in accordance with this opinion.

A correspondent sends the following extract, which he has lighted upon in an old fashioned book of reflections: "If you cannot avoid a quarrel with a blackguard, let your lawyer manage it rather than yourself. No man sweeps his own chimney, but employs a chimney sweeper, who has no objection to dirty work, because it is his trade."—*London Law Journal.*

ONE of the evidences of lunacy offered in a New Orleans contested will case was that the man, while changing his high silk hats twice a year, invariably had them made in the fashionable shape of precisely ten years before.

A BERLIN apothecary shop has reached an age of 396 years. It has, however, changed proprietors and employees serveal times.

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Supreme Court Pennsylvania.

GROVE *vs.* BARCLAY.

An implied contract for use and occupation may arise from the use of the premises by the tenant and the sufferance of the landlord, nor does the fact that the tenant holds over after notice to quit tend to destroy this implication unless the landlord has followed up the notice by some act indicative of an intent to treat him as a trespasser.

Error to the court of Common Pleas No 4, of Philadelphia county.

GORDON, J.—This case, though apparently complex, involves a very simple proposition. The defendant, John K. Barclay, for some ten years before the bringing of the present action, occupied, in whole or in part, the premises of the plaintiff, for his own use and purposes, and the question now is, whether he can be made to pay for them. The court below thought not; we are of a different opinion. In the outstart, we may observe, that the case of Barclay's Appeal, 12 Norris, 50, has no application to the matter in hand; nothing was there determined but that Grove's remedy, whatever it might be, was not in equity. As to the case in hand, if the facts, as stated in the charge of the learned judge who directed the trial below are to be taken as proved, the plaintiffs ought to have had a verdict had those facts been properly submitted, nor would it matter whether such verdict was rendered upon a count in assumpsit or in case, and in order to provide for an alternative of this kind the amendment proposed by the plaintiffs ought to have been allowed. M'Closky v. Miller, 22 P. F. Smith, 151. The facts were for the jury, and they might have found for the plaintiffs on either of the three following grounds: for the use and occupation of the premises; on an implied contract for storage; or for an obstruction of the plaintiff's use of the property by an unwarrantable persistence by the defendants in their possession of it without right. An implied contract for use and occupation may arise from the use of the premises by the tenant and the sufferance of the landlord, nor does the fact that the tenant holds over after notice to quit tend to destroy this implication, unless the landlord has followed up the notice by some act indicative of an intent to treat him as a trespasser. National Oil Refining Company v. Bush, 7 Norris, 335; and see also opinion of Judge Brewster, affirmed in Stockton's Appeal, 14 P. F. Smith, 58. On the question of an implied contract for storage, the court below admitted that such contract might fairly be implied as to the occupancy prior to the correspondence of December, 1873, but not after that time. But we cannot see how the actual status of the parties was altered by that correspondence. It is true, Grove required the vacation of the premises by the removal of the machinery, but Barclay refused to comply with that request, hence, the occupancy continued precisely as it was before. So Grove might, in relief of his property, have moved the machinery, but he elected, as he had a right to do, to let it remain where it was, and thus the original condition of affairs continued as it had been before the correspondence. Having thus a continuation of precisely the same circumstances after the notice as those which had previously raised the implication of a contract, it is impossible to see why that implication should not also be continued. Nor does the defendant's claim of right to the occupancy of the premises help him in his attempted avoidance of his implied contract to pay for their use, unless she can prove that the claim thus made is substantial, for if the contrary were held, then might every such contract be defeated by the interposition of a fictitious claim of right in or to the subject matter of it.

The judgment of the court below is reversed and a new venire ordered.

Supreme Court of Illinois.

JOHN WRIGHT

vs.

THE PEOPLE OF THE STATE OF ILLINOIS.

Witness: Professional Opinion; Whether a Professional Fee may be Required before the Witness shall Testify.—In an action for an assault and battery, a witness who was a physician, was called to testify in behalf of the plaintiff on the trial, and stated that he was called to see the plaintiff professionally, after the injury, and described the condition in which he found the patient. The witness was then shown a policeman's "billy," and asked if a blow struck with it on the head, at or near the temple, would or would not be likely to produce upon the person receiving such blow, a condition like or similar to that in which he found the plaintiff. The witness thereupon, without answering the question, made inquiry of the court whether it did not call solely for a professional opinion, and the court answered that it did. Witness then declined to answer until his professional fee of ten dollars should be paid or secured to him, and persisting in his refusal, the court imposed a fine upon the witness as for a contempt of court. On error, it was *held*, that having already, and without objection on his part, stated the condition of the patient he had visited professionally, the witness could not properly refuse to give his opinion as to the cause of the symptoms he discovered to exist—and this without a professional fee being paid or secured to him therefor. The opinion sought to be elicited was pertinent to the subject about which he had voluntarily testified.—*Chic. Legal Adviser.*

Writ of error to the appellate court for the third district; heard in that court, on writ of error to the circuit court of De Witt county.

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Mr. Justice SCOTT delivered the opinion of the court.

On the trial of the case of John Finneran v. Henry Henson, defendant, John Wright was called as a witness on behalf of plaintiff. The witness stated that he was a graduate of a medical college, and that he had been engaged in the practice of medicine and surgery for a number of years; that he was called to attend Finneran professionally, and without making any objections to doing so, he stated that he found no bruises or signs of violence about him. He further stated the patient complained of dizziness, and buzzing in his head and ears, and was laboring under the hallucination that certain parties were in pursuit of him, and were seeking to harm him." After having stated this much, witness was shown an instrument commonly known as a policeman's "billy," and was asked if a blow struck with it would or would not be likely to produce upon the person receiving such blow, a condition alike or similar to that in which he found Finneran. This question the witness refused to answer unless he was first paid or had secured to him a fee of ten dollars, on the ground he said he regarded it as calling for a professional opinion. Having without objection stated the condition of the patient he had visited professionally, the witness could not, under any rule of law refuse to state what would cause the symptoms he discovered to exist. That was pertinent to the subject about which he had testified voluntarily. This view of the case renders it unnecessary to consider other questions discussed by counsel and concerning which no opinion will be expressed. Judgment affirmed.

Recent Cases on Administration Law.

Several questions of interest in the law of administration have recently been passed upon.

In Vimont v. Chicago & N. W. R. R. Co. (22 Northw. Rep., 906), it was held that a party to whom a claim for damages for death by personal injuries caused by the negligence of a railroad company in one State has been assigned, may maintain an action thereon in the courts of another State, although such assignment was executed and delivered in a third State by the law of which it would be void.

The court concede that a claim for damages arising out of a personal tort and originating under the common law is not assignable before a judgment, but, on the other hand, they hold that where a statutory cause of action is not a mere personal claim terminating with the death of the injured party, but becomes a part of his estate and descends to his representative by the law of the place where the action is brought, the assignee may maintain an action, although such a claim was not assignable by the law of the State where the assignment was executed, delivered and accepted.

Judge Cooley's opinion in Reynolds v. McMullen (22 North. Rep., 41) is of considerable importance upon the doctrine of the powers of foreign executors and administrators, and qualifies or limits the rule in Peterson v. Chemical Bank (32 N. Y., 21).

A man holding a mortgage on lands in Michigan died in St. Louis, where his domicile was at the time of his death, and the public administrator of St. Louis got possession of the mortgate, among other assets, and the relatives took out administration in Michigan. The public administrator of St. Louis refused to surrender the assets there to the Michigan administrators, and sold them. The mortgage, which was for over $1,000, was sold for $80 to a purchaser who took with notice. The purchaser's assignee satisfied the mortgage upon receiving about half the amount due, and the present holder of the land claimed that this was a discharge of the mortgage.

The sucessor of the Michigan administrator now sued to foreclose the mortgage.

The court, after holding that the public administrator of St. Louis had no adequate authority to dispose of the assets merely by virtue of his official title (although it was conceded that he might have been authorized to dispose of property in Missouri had he taken out letters), proceed to discuss his power to make an assignment of a mortgage upon Michigan lands.

The conclusion reached was that, inasmuch as there was an existing Michigan administration, the sale of the mortgage by the Missouri public administrator was void; and this conclusion was based upon the ground that after letters have been issued in any State or county a foreign administrator cannot be recognized there even for the purpose of a voluntary payment.

If this general poposition is sound, the decision adds new importance to the rule requiring ancillary administration whenever there are foreign securities among the assets.

In this case it was conceded for the purposes of the decision that the intestate was domiciled in Missouri, so that so far as domicile affords the rule of principal administration a Michigan administration must be deemed ancillary.

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A Caterer's Liability.

The Supreme Court of Massachusetts, in Bishop v. Weber (June, 1885), held that a caterer is liable in an action of tort for negligence, in furnishing unwholesome food, and said:

"If one who holds himself out to the public as a caterer, skilled in providing and preparing food for entertainments, is employed as such by those who arrange for an entertainment to furnish food and drink for all who may attend it, and, if he undertakes to perform the services accordingly, he stands in such a relation of duty toward a person who lawfully attends the entertainment and partakes of the food furnished by him as to be liable to an action of tort for negligence in furnishing unwholesome food whereby such person is injured. The liability does not rest so much upon an implied contract as upon a violation or neglect of a duty voluntarily assumed. Indeed, where the guests are entertained without pay, it would be hard to establish an implied contract with each individual. The duty, however, arises from the relation of the caterer to the guests. The latter have the right to assume that he will furnish for their consumption provisions which are not unwholesome and injurious through any neglect on his part. The furnishing of provisions which endanger human life or health stands clearly upon the same ground as the administering of improper medicines, from which a liability springs irrespective of any privity of contract between the parties." Norton v. Sewall, 106 Mass., 144; Longmeid v. Holliday, 6 Exch., 767; Pippin v. Sheppard, 11 Price, 400.

NOTES OF RECENT DECISIONS.

Roads and Highways: Evidence; Experts' Negligence; Object Left in Road Likely to Frighten Horses; Sunday.—An owner of land through whose property a public highway runs, has an absolute right to use a portion of such highway for certain purposes, for a temporary period and in a reasonable manner, and this right may be exercised in derogation of the travelling public.

The mere exercise of this right of obstruction for a lawful purpose imposes no liability to pay for damages resulting therefrom. It must be an unreasonable or negligent exercise of the right to impose liability.

A property owner who has a lawful right to expose an object on or along a public highway within view of passing horses, for a temporary purpose, is bound only to take care that it shall not be calculated to frighten ordinarily gently and well-trained horses. He is not bound to guard against frightening skittish, vicious, timid, and easily frightened horses.

In an action against a person leaving an object on the roadside at which it is alleged that a certain horse taking fright, reared, fell, and died, causing in his fall personal injuries to the plaintiff, witnesses familiar with horses may be called upon to give their opinion based upon facts observed by themselves as to whether the object in question was calculated to frighten horses; whether the mere fall of the horse could have killed him; and whether a horse could have been frightened to death by the object in question.

The owners of property through which a highway ran were engaged in whitewashing their fence. In order to do this they used a small barrel mounted on wheels, which was full of whitewash, and which was moved along from time to time as the work progressed. This barrel was left standing, covered over with a cloth, and having a shovel projecting a short distance above its top all day Sunday on one side of the beaten track. In an action against such property owners for an injury alleged to have been occasioned by a horse taking fright at this object:

Held, That the jury should have been instructed that unless there was something of an unusual and extraordinary character in the structure and appearance of this apparatus which would naturally tend to frighten horses of ordinary gentleness and training, it was not negligence to use it, and that its reasonable use for no longer a time than was fairly required along the highway in whitewashing the defendants' fences would not subject defendants to liability even though some horses might or did take fright at seeing it.

In an action against a private citizen for leaving an obstacle in the road whereby plaintiff's horse has been frightened and caused injury, the defendant cannot set up as a defence the fact that the plaintiff was at the time travelling on the highway for pleasure on Sunday.

In the above case, plaintiff having proved that other horses had been frightened by the same object, evidence was held admissible on behalf of defendants to show that those horses were skittish horses. [Piollet et al. v. Simmers. Supreme Ct. of Pennsylvania. 1884.]

Contract: Parole Agreement; Statute of Frauds; Damages.—Where a land owner enters into a parole agreement with another person to execute to such other person a written lease for the land for a term of more than one year, and such other person, in pursuance of such agreement, and with the consent of

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the land owner, enters into the possession of the land, and expends time, labor, money and materials in making improvements on the land and putting it in a condition to use and enjoy it during the term of his contemplated lease, and afterwards the land owner refuses to execute the lease, and ousts the contemplated iessee from the premises: *Held*, That the parole agreement is not wholly and entirely void under the fifth and sixth sections of the Statute of Frauds, but is so far valid that the contemplated lessee may recover from the land owner such damages as in justice and equity he should recover; that the taking of the possession of the property, and expending time, labor, money and materials thereon to this extent, takes the case out of the Statute of Frauds. [J. R. Deisher v. William Stein et al. Supreme Court of Kansas. July, 1885.]

Exemption from Execution: Printing Press and Material.—A printing press and printing material used in printing and publishing a weekly newspaper may be exempt from execution under subdivision 8, section 3, of the exemption laws, and under the facts of this case are exempt.

Where the owner of a printing press and printing material resides in Kansas, is a married man and the head of a family, and uses such printing press and printing materials for the purpose of editing and publishing a newspaper, and they are necessary therefor; and the editing and publishing of such newspaper is his principal business from which he derives his principal support; and in editing and publishing such newspaper he personally arranges the matter and forms therefor, and performs such other work as is usually performed by the foreman of a weekly newspaper; but not being a practical printer, the most of the work is done through the agency of employees; and he is a partner in two other kinds of business, and is also a justice of the peace: *Held*, That the property is nevertheless exempt from execution, although it is not exclusively used by the owner in person, and although he may have an interest in other kinds of business. [J. W. Bliss v. James S. Vedder. Sup. Ct. of Kansas. July, 1885]

Corporation: Right to Make and Enforce Reasonable Rules.—A corporation has a right to make reasonable by laws for the regulation of its business. A rule by a telegraph company that "transient persons sending messages which require answer must deposit an amount sufficient to pay for ten words. In such case the signal 'thirty-three' will be sent with the message, signifying that the answer is prepaid," is a reasonable regulation, and a plaintiff in an action to recover the statutory penalty for failure to deliver a message, who refused to comply therewith by depositing twenty-five cents, cannot recover for the company's omission to deliver. [Western Union Tel. Co. v. John McQuire, S. C. Ind., Sept. 16, 1885.]

Negligence: Plaintiff Free from Fault.—Plaintiff was unloading lumber into a wagon from the end of a car, and hearing a locomotive at some distance apparently approaching undertook to get down from his car to protect himself and take care of his team. In doing this he stepped one foot on the projecting link of another car standing about 18 inches distant. While in this position the latter car was violently "bumped" against the first car by being struck by a third car, and the foot was crushed. *Held*, that the defendant was guilty of negligence and that there was no contributory negligence on the part of the plaintiff. [Watson v. Wabash, St. Louis & Pac. Ry. Co., S. C. Iowa, April, 1885.]

Negligence: Duty of Exercising Due Care; Obstructions Placed Near Track Without Authority from the Railway Company.—While descending from a moving car in the regular discharge of his duty as brakeman plaintiff was struck by a post erected by the station agent near the track for his own use, and in no way connected with the operation of the road. *Held*, that the brakeman, having no knowledge of the existence of the post, was not negligent in not looking out for it and avoiding striking it, but that the railroad company was negligent in allowing the post to remain in dangerous proximity to the track, and that it was liable for the injury caused thereby. [Kearns v. Chicago, Milwaukee & St. Paul Ry. Co., S. C. Iowa, July, 1885.]

Judgment: Death of Defendant; Entry; Appeal by Survivor.—Where the court once acquires full jurisdiction, in a regular manner, during the lifetime of both parties, the death of the defendant after trial, but before judgment, will not abate the suit and render judgment against him void. At most it is but an irregularity. The party against whom a decree of divorce has been rendered has the right to have the same reversed for error, and this right is not defeated by the death of the other party pending the appeal or writ of error. The divorced wife may, after her husband's death, prosecute a writ of error to reverse the decree, and thereby be restored to all her rights as widow in the estate of her deceased husband. [Danforth v. Danforth, 111 Ill., 236; s. c. 32 Alb. L. J., 232]

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Depositions de Bene Esse: Prresting Pro ceedings.—A party who has initiated proceed ings to take a deposition *de bene esse*, has no power, after a witness has been examined in chief, and an adjournment taken, to withdraw the proceedings; and a party in interest may, by attachment, compel such witness to appear and submit to a cross-examination. [In re Bishop, U. S. Cir. Ct., S. D., N. Y., 24 Fed. Rep., 542.]

False Imprisonment: Motive; Lawful Warrant.—A person who has procured the arrest and imprisonment of another on a lawful warrant is not liable to an action for false imprisonment, although his object in making the complaint upon which the warrant was issued was to enforce the payment of a debt. [Mullen v. Brown, S. C. Mass., 138 Mass.]

Contract: Validity; Negligence.—Where a person negligently signs a written contract, he is bound by its provisions in the absence of legal fraud. A person unable to read, who does not have such contract read to him, is guilty of such negligence. [McKinney v. Herrick, S. C. Iowa, June, 1885.]

1. *Negotiable Instruments: Protest; General Assignment of Endorser.*—Where an endorser of a promissory note assigns all his property for the benefit of his creditors before the maturity of the note, notice of the demand of payment and non-payment at maturity should be given to the endorser.

2. *Ibid: Ibid; Notice to Assignee.*—Notice of demand and non-payment given to the assignee in insolvency is not sufficient to fix the liability of the endorser.

3. *Assignment for Benefit of Creditors: Contract of Endorsement; Notice of Protest.*—Unless the liability of the endorser be fixed by demand and notice of non payment, the endorsed note cannot be proved as a claim against the estate in insolvency. [House, assignee, v. Vinton County Nat. Bank, S. C. Ohio, June 16, 1885.]

IN Hilliard v. N. Y. & Cleveland Gas Coal Co. (13 Weekly Law Bul., 379), the Ooio statute, in reference to the abandonment of premises and cessation of rent, when injury renders them untenantable, was construed by the Ohio court as follows:

The defendants had hired two rooms in plaintiff's building next to a vacant lot, and had covenanted (which tenants are strangely ready to do) to keep the premises in good and constant repair. The subsequent construction, by the owner of the vacant lot adjoining, of a building cutting off light and air, rendered the rooms damp and unhealthy and untenantable, and the defendants abandoned them.

The court held that the exclusion of light and air did not exonerate the defendants, following in this the New York cases; and further that the statute does not contemplate such an injury to the premises, but rather to protect the lessee from an unexpected or unusual action of the elements, or of human forces causing a destruction or injury which the parties ignorantly or inadvertently failed to anticipate.

MR. ROGERS, at the dinner of the American Bar Association, told this story: The judges were holding court in some western county town (of course it was many years ago), and Mr. Brown's case was called. Mr. Brown was at the tavern and the court sent for him, and told him that his case had been called and that since he had not answered it must go over. The case was an appeal. Brown said, "Your honors, I don't care which way you decide that case. If you decide to affirm, I will get my money, and if you decide to reverse, I will have a new trial and get another verdict with ten per cent. interest added, so I don't care which way you decide it, but I want you to decide it now. I hope you will not put it off. I'll tell you what I'll do, I'll give you five dollars to hear it now." The court answered indignantly, "Do you mean to insult us, Mr. Brown?" "Why no, your honors," said Mr. Brown, "I did not mean to insult you. I had no intention of insulting your honors. Why, your honors misunderstood me, I did not mean to say that I would give the court five dollars altogether. I meant to say that I would give your honors five dollars apiece."

IN the course of a friendly conversation the other day in a club comprising a good many members of the legal profession, one such member remarked that a man in his town got himself into trouble by marrying two wives. Another replied, that a good many men in his town had done the same thing by marrying one. A third retorted that quite a number of his acquaintances found trouble enough by barely promising to marry, without going any further; whilst a fourth solemnly assured the other that a friend and client of his was bothered enough when simply found in company with another man's wife.

A SCHOOL board examiner lately asked the following questions of a little girl: "What is the plural of man?" "Men." "Very well; and what is the plural of child?" "Twins," immediately replied the little girl.

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Longevity of Public Men.

A London doctor has published some curious comparative statistics on the longevity of public and professional men. He found that the average age at death of twenty-five most prominent American statesmen during the last hundred years was sixty-nine. The average of an equal number of English statesmen was seventy years—practically the same. He thought the latter did more work at an advanced age. The difference in favor of English, as compared with American political life, was brought out by comparing the ages at death of members of the British Parliament with those of the United States Congress who died between 1860 and 1884. Of our Senators, fifty- nine gave an average of sixty-one years; one hundred and forty-six Representatives averaged fifty-five years, and the average of both was fifty-eight. The one hundred and twenty-one members of Parliament averaged sixty-eight years at death.

THE question what is a sale as distinguished from a contract to supply by making or manufacturing, which was recently discussed in our courts in the renewal of the controversy as to what is within the Statute of Frauds, was recently up in another form in an action in the Supreme Court of California on an alleged warranty of concentrators furnished by the defendants.

The court held that the primary and main agreement between the parties being not an executed sale but an executory contract to furnish the concentrators, a warranty could not be implied, and hence the defendants could not be held for the plaintiff's expenses in the transportation of the unfit apparatus. Harley v. Golden State, &c., Iron Works, 5 Pac. Rep., 160.

THE number of letters posted in the world each year averages about 52,000,000,000.

A LARGE proportion of the models sent to the Patent Office are like lies; they "return to plague the inventor."

IN sad truth, half of our rorebodings about our neighbors are but our own wishes, we are ashamed to utter in any other form.

LET us begin our heaven on earth; and being ourselves tempted, let us be pitiful and considerate and generous in judging others.

WHAT a man knows should find its expression in what he does. The value of superior knowledge is chiefly in that it leads to performing manhood.

THE newspapers of the world have just been reckoned up of about 35,000, thus giving one to every 28,000 inhabitants.

The Courts.

IN EQUITY.—New Suits.

Sept. 25, 1885.

9632. Albert C. Barnes et al. v. Moses Madry et al. Judgment creditors' bill. Com sol, C. C. Cole.

Sept. 26, 1885.

9633. Adelia Clift v. George S. Clift. For divorce. Com sol, Sam'l C. Mills.

9634. Susie P. Higgins v. Lucius C. Higgins. For divorce. Com sol, Franklin H. Mackey.

Sept. 28, 1885.

9635. Wm. Martin v. Rena Beal et al, For partition by sale. Com sol, W J Newton.

9636 John W. Williams et al. v. Frederick Bates et al. To appoint trustee. Com sol, B. G. Lovejoy.

Sept 29, 1885.

9637. Fannie E. Hill v. Michael B. Harlow. To enjoin, &c Com sol, W. F. Mattingly.

9638. Nellie McMahon et al. v. Mary Gleason et al. To sell, &c. Com sols, C. Carrington and L Williamson.

Sept, 30, 1885.

9639. David O'Connell et al. v. Johannah Hartnett. To set aside deed. Com sols, Same.

9640 Isaac S. Lyon v. James P. Lyon. Com sol, D. O'C. Callaghan.

Oct. 1, 1885.

9640. Robert B. Cropley et al. v. Owen F. Murray et al. To enjoin disposal of assigned property. Com sol, F. W. Jones

9641. Charles F. Clagett v. Fanny E. Clagett. For divorce. Com sol, M. J. Ford.

Oct. 2, 1885.

9642. The German Orphan Asylum Association, of the District of Columbia, and Chas N. Krause v. Samuel T. Suit. To reform a conveyance Com sol, W. F. Mattingly.

CIRCUIT COURT.—New Suits at Law

Sept. 24, 1885.

26400. Richard W. Barker v. Henry L. Nelson. Acct., $122.25. Pltfs atty, H. W. Garnett.

26401. Bruce Carriage Company v. James W. Pumphrey. Note. $160. Pltfs atty, Same.

Sept, 25, 1885.

26402. Armour & Co. v. George Killen. Acct., $124.58 Pltfs atty, C C. Lancaster.

26403. Charles Walter v. John J. Tenney Judgment of Justice Bundy, 29.97.

Sept. 26, 1885.

26404. Fannie W. Finch v, Georgiana L. Leonard. Appeal Defts atty. W. J. Newton.

Sept. 28, 1885.

26405. Marvian Eastwood v. Frank Mac Arthur. Notes, $1500. Pltfs atty, Same.

Sept. 29, 1885.

26406. Annie O Talbot et al v. The Potomac Steamboat Company. Damages, $5000. Pltfs atty, T. J Mackey.

Sept. 30, 1885

26407. Armour & Co. v. Otho S. Pumphrey. Acct. $142 23. Pltfs atty, C. C. Lancaster.

26408 Hincks & Johnson v. Timothy Costello. Replevin. Pltfs attys, W. H. Smith & Son.

Oct. 1, 1885.

26409. Timothy Costello v. Hincks & Johnson. Acct, $71.78. Pltfs atty, T. F. Miller.

Oct. 2, 1885.

26410. George J. Cornish v. Smith & Strong. Note. $400. Pltfs atty, H. B Moulton.

PROBATE COURT.—Justice Cox.

Oct 1, 1885.

Estate of William Cahill. Will admitted to probate.

Estate of Columbus Scriber. Petition for probate of will filed.

Estate of Joseph Trimble. Order of sale.

Estate of Sarah Otterback. Order for rule to show cause

Estate of Ira Crosson. Will admitted to probate and letters testamentary issued to Charles Allen and H. L. Rose.

Estate of John Hughes. Letters issued to James Hughes. Bond, $2,000.

Estate of John M. Comstock Letters issued to Sarah C. Comstock. Special bond, $6,000.

Estate of W. W. Greenfield. Will admitted to probate.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term in Equity.

SCHOENBORN v. SCHOENBORN. } 9151. Equity Docket 24.

The report of the trustees appointed in the above entitled cause, having been read and considered, it is, this 22d day of September, A. D. 1885, ordered and adjudged that the sales reported by said trustees be finally ratified and confirmed unless cause to the contrary be shown on or before the 22d day of October, A. D. 1885.

Provided, a copy of this order be published in the Washington Law Reporter once a week for each of three successive weeks before the 22d day of October aforesaid.

A B. HAGNER.

A true copy. Test: 40 R. J. MEIGS, clerk.

CHANCERY SALE OF IMPROVED AND UNIMPROVED PROPERTY ON THE EAST SIDE OF THE SEVENTH STREET TURNPIKE, NEAR THE HOWARD UNIVERSITY, BETWEEN TRUMBULL STREET AND HOWARD AVENUE.

By virtue of a decree of the Supreme Court of the District of Columbia, passed in the consolidated Equity Causes No. 6354, wherein Oliver B. Magruder is complainant and John W. Beall et al defendants, and No 8874, wherein Mary V. Branigan et al. are complainants and Oliver B Magruder et al defendants, the undersigned trustees will sell at FIVE O'CLOCK P. M., on FRIDAY, THE TWENTY FIFTH DAY OF SEPTEMBER A. D 1885, the following described property, in parcels, according to the plat filed in said Cause No. 6354, viz.: All that part of a tract of land in Washington county in the District of Columbia, known as Mount Pleasant, and being a part of Lot No. Three (3) in the division of said tract, which was allotted to David Peter, said part or parcel of land fronting on the eastern boundary of the Seventh street turnpike leading to Rockville, and containing one square acre of land, bounded on the north by W. D. Beall's purchase, and on the south by that sold to Aaron M. Gattrell, together with all the improvements. Said property was subdivided into lots of 32 to 37 feet front, with a depth of 208. One of said lots is improved by a large Three-story Brick Dwelling and out-house.

Terms of sale: One-third of the purchase money cash in hand, and the remainder in equal installments, payable in twelve and twenty-four months from the day of sale, the said deferred payments bearing interest at the rate of six per centum per annum from date of sale. All conveyancing at cost of purchaser Taxes to be paid by the Trustees out of the proceeds of sale. A deposit of $50 on each lot required on day of sale. If the terms of sale are not complied with in ten days, the trustees reserve the right to resell the property at the risk and cost of the defaulting purchaser

GEORGE E. HAMILTON,
FRANKLIN H. MACKEY,
Trustees.

THOS J. FISHER & Co., Auctioneers. 37.2

☞THE ABOVE SALE IS POSTPONED UNTIL FRIDAY, the SECOND DAY OF OCTOBER, at the same hour and place.

GEORGE E. HAMILTON,
FRANKLIN H. MACKEY,
39-1 Trustees.

☞ THE ABOVE SALE IS FURTHER POSTPONED until TUESDAY, the SIXTH DAY OF OCTOBER, same hour and place.

GEORGE E. HAMILTON,
FRANKLIN H. MACKEY,
40-1 Trustees.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of Henrietta P. Plant, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of September, 1885.

GEORGE H. PLANT,

CHAPIN BROWN, Solicitor. 39 Administrator c. t. a

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 25th day of September, 1885.

JENNIE CATHCART v. CHARLES H. KNIGHT et al. } No. 9597. Eq. Doc.

On motion of the plaintiff, by Mr. H. B. Moulton, her solicitor, it is ordered that the defendant, Elizabeth M. Dailey, cause her appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.

True copy. Test: 39 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Cyrus S. Richards, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 23d day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 23d day of September, 1885.

CHARLES H. RICHARDS,
MARIA W. RICHARDS,

G. W. BALLOCH, Solicitor. 39 Executors.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. September 25th, 1885.

In the matter of the Estate of Jacob Deihle, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Max Luchs.

All persons interested are hereby notified to appear in this court on Friday the 16th day of October next, at 11 o'clock, a. m., to show cause why the said Letters of Administration on the estate of the said deceased should not issue as prayed Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: 39 H. J. RAMSDELL, Register of Wills.

CHARLES D. FOWLER, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. The 17th day of September, 1885

GEORGIANA STEWARD v. JAMES D. MANKIN, Adm'r, &c. } 9603. Equity Docket 25.

Upon consideration of the motions of the counsel for the plaintiff, it is hereby ordered, adjudged and decreed, that the style and bill of complaint in the above-stated case be amended by adding to the description of the defendants, the unknown heirs of the said Jabez Pittard, deceased.

And also that publication be made requiring the said unknown heirs to cause their appearance to be entered in the above-stated case on or before the first rule-day occurring forty days after this date.

W. S. COX, J.

A true copy. Test: 39 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 24th day of September, 1885.

HELLEN J. DURFEE v. GEORGE H. DURFEE. } In Equity. No. 9297.

Application for divorce on the ground of desertion.

On motion of the plaintiff, by Messrs. Robert R. Shellabarger and Charles S. Wilson, her attorneys, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Asso. Justice.

True copy. Test: 39 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 24th day of September, 1885.

GEORGE PLITT v. AMELIA PLITT. } No. 9601. Equity Docket 25.

Application for divorce on the ground of desertion.

On motion of the plaintiff, by Mr. J. Ambler Smith, his solicitor, is it ordered that the defendant, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Asso. Justice.

A true copy. Test: 39 R. J. MEIGS, Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. September 25th, 1885.

In the case of William R Smith and John F. Ennis, Administrators of Mary M. Cameron, deceased, the Administrators aforesaid have, with the approval of the court, appointed Friday, the 16th day of October, A. D. 1885, at 11 o'clock a. m , for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrators will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

Test: 39 H. J. RAMSDELL, Register of Wills

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 23d day of September, A. D. 1885.

FRANCIS T. BOWLER v. HILDA BOWLER. } No. 9625. Eq. Dock 25.

Application for divorce on the ground of adultery.

On motion of the plaintiff, by Mr. Wm. W. Hoarman, his solicitor, it is ordered that the defendant, Hilda Bowler, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

Provided a copy of this order be published once a week for three successive weeks in the Washington Law Reporter prior to the expiration of the said forty days.

A. B HAGNER.

True copy. Test: 39 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. September 26th, 1885.

In the case of Herman J. Schulties Administrator of Jacob Eugen Reghenau, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 16th day of October, A. D 1885, at 11 o'clock, a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 93 H. J. RAMSDELL, Register of Wills.

CHAS. A. WALTER, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business. September 25th 1885.

In the case of Charles Wheatley, Samuel E. Wheatley and Walter T. Wheatley, Executors of Francis Wheatley, deceased, the executors aforesaid have, with the approval of the court, appointed Friday, the 16th day of September A. D. 1885, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares(or legacies)or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Excutors will take the benefit of the law against them. Provided. a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 39 H. J. RAMSDELL, Register of Wills

GORDON & GORDON, Solicitors.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business.

In reEstate Thomas H. Evans, deceased.

Upon consideration of the petition of Sarah T. Evans for Probate and record of the last Will and Testament of Thomas H. Evans, deceased, and for Letters Test mentary, it is, this 18th day of Sep'ember, 1885. ordered, adjudged and decreed, that William J. Evans, Edward E. E vans and Charles A. Evans, of the next of kin of the deceased, and all other persons intersted, be notified by publication in the Washington Law Reporter once a week for three weeks, of said petition, and to appear in Court on the 9th day of October, 1885, and show cause if any they have, why said will should not be admitted to probate and record, and Letters Testamentary be granted as prayed by said petitioner.

W. S. COX.

A true copy. Test: 39 H. J. RAMSDELL,
September 21st, 1885. Register of Wills, D. C.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 23d day of September, 1885.

SARAH R. WILLIS v. JOHN J. WILLIS. } In Equity. No. 9600.

For divorce on the ground of drunkenness and cruelty

On motion of the plaintiff, by Charles and William B. King, her solicitors, it is ordered that the defendant, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

A. B. HAGNER

A true copy 39 Test: R. J MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia. the 26th day of September, 1885.

ELLEN M. HODGES v. ABRAHAM HODGES. } No. 9627. Eq. Dock. 25.

The marshal having returned the defendant "not to be found," on motion of the plaintiff, by Mr Fred W. Jones, her solicitor, it is ordered that the defendant, Abraham Hodges, cause his appearance to be enuered herein on or before the first rule-day occurring forty days after this day; otherwise this cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.

A true copy. Test: 39 R. J MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Carl G. Freudenberg, late of the District of Columbia, dec'd

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 25th day of September, next; they may otherwise by law be excluded from all benefit of the said estate,

Given under my hand this 25th day of September 1885.

ANNIE K. FREUDENBERG,

F. P. B. SANDS; Solicitor. 39 Executrix.

THIS IS TO GIVE NOTICE

That the subscribers, of the District of Columbia have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of August Muller, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscribers, on or before the 11th day of September next; they may otherwise by law be excluded from all benefit of the said estate

Given under our hands this 11th day of September, 1885.

CHARLES MADES,
HENRY MILLER,
37 Executors.

EDWVRDS & BARNARD and S. T. THOMAS, Solicitors.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. 25th September, 1885.

In the matter of the Estate of John A. B. Leonard, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament dated Nov. 15, 1870, and for Letters Testamentary on the Estate of the said deceased has this day been made by Francis De P. N. J. Leonard.

All persons interested are hereby notified to appear in this court on Friday the 30th day of October next at 12 o'clock, m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testimentary on the estate of the said deceased should not issue as prayed. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER. Justice.

Test: 39 H J. RAMSDELL, Register of Wills.

REGINALD FENDALL, Solicitor

IN THE SUPREME COURT OF THE DISTRICT OF Columbia the 25th day of September, 1885.

ALICE L SANBORN v. DANIEL L. SANBORN } No. 9472. Doc. 24.

Application for divorce on the ground of desertion.

On motion of the plaintiff, by Mr. H. B. Moulton, her solicitor, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B HAGNER. Justice.

A true copy. 39 Test: R. J. MEIGS, Clerk

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

JOHN KELLY and MARGARET A. KELLY, Plaintiffs,
v.
WILLIAM H WILSON, MARY CATHARINE THOMPSON, JOHN THOMPSON, DOLLIE KENNARD, CHARLES A. CAMPBELL, FANNY CAMPBELL and ISAAC WILSON, Defendants.
} Equity. No. 9628.

The bill states that on the 25th day of November, A. D. 1858. Mary A. Campbell contracted to convey to Amon Green the south one-half by the depth of lot seventeen (17) in square six nundred and eighty-five (685), in the City of Washington and District of Columbia, and executed a deed therefor to said Green, which deed was not duly acknowledged by said Mary A. Campbell That pursuant to said contract and shortly after its date, said Mary A Campbell surrendered possession of said premises to said Green, and that he and his successors in title, the complainants, being the present owners under him, have ever since had quiet, peaceable, open, notorious and adverse possession thereof under claim and color of title.

The bill prays for a specific performance of the contract above referred to by the due execution and acknowledgment of a deed from the defendants named in the caption, who are alleged to be the only heirs of Mary A. Campbell, to the complainants, and that complainants may have their title quieted as against said defendants, and the bill says that the defendants are non residents of the District of Columbia, ane on motion of Hillyer & Ralston, complainants' solicitors, it is, this twenty-third day of September, A. D. 1885,

Ordered, that the said defendants cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

Provided a copy of this order be published in the Washington Evening Star, once a week, for each week before the day last specified.

A B. HAGNER, Associate Justice,

True Copy Test: 39 R. J. MEIGS, Clerk.
By M. A. CLANCY, Assistant Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of McGinnis Sands, late of the District of Columbia, deceased

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 19th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of September, 1885.

JOB BARNARD,

EDWARDS & BARNARD, Solicitors. 38 Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 19th day of September, 1885.

DAVID LOGAN Complainant,
v.
JAMES S. LINTHICUM et al., Defendants.
} No. 9611. Equity.

On motion of the complainant, by Messrs. Edwards & Barnard, his solicitors, it is ordered that the defendants, James S. Linthicum, Sallie Linthicum, Edward P. Suter, Almira Suter, Samuel T. Henkle, Margaret E. Henkle, Charles E. Spalding, N. Virginia Spalding, Richard B Clark, Bertha Clark, John W. Walker, Ella Walker, and Robert R Boarman, cause their appearance to be entered herein on or before the first rule-day occuring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.
True copy. Test: 38 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 14th day of September, 1885.

GEORGIANA D. MOORE
v.
LEOPOLD F. MOORE.
} No. 9606. Eq. Doc. 25.

On motion of the plaintiff, by Messrs. Birney & Birney, her solicitors, it is ordered that the defendant, Leopold Frederick Moore, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.
A true copy. Test. 38 R. J. MEIGS, Clerk.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscribers of the District of Columbia have obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of William Walter, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscribers on or before the 16th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 16th day of September, 1885.

KATHARINA WALTER,
38 CHARLES WALTER,
S. H. WALKER, Solicitor. Administrators c. t. a.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business. September 18th, 1885

In the matter of the Will of Roberta W. Bell, late of Washington D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Charles J. Bell, and Gar. iner G Hubbard.

All persons interested are hereby notified to appear in this court on Friday, the 9th day of October next at 11 o'clock, a. m., to show cause why the said Will should not be proved and admited to Probate and Letters Testamentary on the estate of said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W S. COX, Justice.
Test: 38 H. J. RAMSDELL, Register of Wills.
JAMES H. SAVILLE, Solicitor.

THIS IS TO GIVE NOTICE,

That the subscribers of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Joseph Trimble, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 11th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 11th day of September, 1885.

JAS. TRIMBLE,
39 MARY BLAKELY,
JUDSON T. CULL, Solicitor. Executors.

THIS IS TO GIVE NOTICE:

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Clifton B. Scott, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of September next: they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of September, 1885.

FILLMORE BEALL, Solicitor, 39 JANE C. SCOTT.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 21st day of September, 1885.

CHARLES A. MANDLEY, Plaintiff,
vs.
LAVINIA MANDLEY, Defendant.
} Equity, No. 9593.

Petition for divorce on the ground of desertion

On motion of the plaintiff, by Mr. T. J. Mackey, his solicitor, it is ordered that the defendant, Lavinia Mandley, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.
A true copy. Test: 39 R J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 21st day of September, 1885.

ALICE V. LEE
v.
WILLIAM F LEE
} Equity, No. 9613.

On motion of the plaintiff, by Mr. T. J. Mackey, her solicitor, it is ordered that the defendant, William F. Lee, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default

By the Court. W. S. COX, Justice.
A true Copy. Test: 39 R. J. MEIGS, Clerk.

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Washington Law Reporter

WASHINGTON - - - - - November 21, 1885.

GEORGE B. CORKHILL - - - EDITOR

THE application of photography to obtain evidence for the purpose of suppressing vice in New York city suggests the practicability of the use of the art in other cases. In this instance, by means of a pocket camera, instantaneous views of variety and concert saloons "in full operation" were taken in the night time under the electric light of the streets.

If in *nisi prius* trials pictures of witnesses on the stand could be reproduced in the various stages of their testimony, a history of the case would be obtained which would often be more truth telling than record evidence itself. There is much in the appearance and manner of the witness which the court of error can never know. Photography will supply a good deal that is lacking. The phonograph would complete the rest.

When instantaneous photography is utilized in the courts, expressions of features will be caught and retained for the future study of the appellate judge. Impressions will be obtained which may even escape the critical attention of the observant trial court.

Questions of fact may then be reviewed with discrimination and without error. We look forward to the day when the bill of exceptions will present a living photograph of the trial below. Photography has already been used in the courts to determine the question of the identity of an individul. Underzook v. The Commonwealth, 76 Pa.; Luke v. Calhoun County, S. C. Ala., 14 Am. Law Reg., 395. In the former case a mutilated body whose face was discolored and swollen, was found, having been buried apparently for some days. The witness who found it had never seen the person before. It was held that he might testify that the face resembled the photograph of the person alleged to be the one found. The question whether the witness could identify it was left to the jury.

For the purpose of detecting handwriting, photography has been found to be an invaluable aid. There was a case in Kentucky involving the question of the genuineness of the handwriting of a deceased person, in which the introduction of a magnified photograph of the paper alleged to have been written by him was of itself a convincing proof of its falsity. On the other hand, we recall another case in which expert testimony as to the genuineness of an endorsement was so conflicting, that if it had been left to the jury without other proof, a disagreement would have doubtless been the result.

In criminal cases the uses of the art are apparent. A photograph which would preserve the features and expressions of the accused at the time of his arrest and when undergoing a preliminary examination, which in cases of homicide would present the body with all its surroundings, before any change has taken place in its condition, would enable the court and jury to arrive at a conclusion more satisfactorily than from the statements of the accused, the conflicting testimony of the witnesses and the rude plans of incompetent draughtsmen.

THE present artificial rule excluding the testimony of a party to or interested in a suit against the representative of a deceased person, upon the question of a personal communication or transaction with the deceased, will always make trouble in the courts from inherent difficulties of administration; and the adoption of some principle allowing the testimony to be re-

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ceived, but preventing it from having effect unless properly corroborated, would accomplish all the purposes with but a small part of the inconveniences now existing.

Supreme Court District of Columbia

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

OLIVER M. ATWOOD
vs.
TALTON LATNEY ET AL.

LAW. No. 25,982.

Decided July 8, 1885.
Justices HAGNER, JAMES and MERRICK sitting.

Where the undertaking in an appeal bond is absolute, there is no necessity in declaring on the bond for failure to prosecute the appeal with effect, to aver that any request or demand was made upon the defendants to pay the damages and costs, and a demurrer upon that ground is frivolous.

THE CASE is stated in the opinion.

JAMES W. GREER, E. B. HAY and SAMUEL MADDOX for plaintiff.

FRANK T. BROWNING for defendants.

Mr. Justice JAMES delivered the opinion of the court.

This is a suit upon an appeal bond given by the defendants, Latney, Burns and Kilmartin, in the case of an appeal from a judgment of a justice of the peace in a landlord and tenant case. The declaration sets forth that the defendants, by their certain writing obligatory, sealed, &c., acknowledge themselves to be jointly and severally bound to the plaintiff in the sum of $150, conditioned that if the appellant shall prosecute his appeal in this court, and shall pay the said Atwood all intervening damages resulting from waste, and all intervening rents for the premises and costs, in case he shall fail to prosecute his appeal with effect, then the bond shall be discharged.

The declaration then asserts that the appeal was not prosecuted with effect, and that the defendants "did not nor ever would pay the damages and costs." To that declaration the defendants demurred, on the ground that there was no averment of any request or demand made upon the defendants, or either of them, for the payment of the intervening rents, damages and costs. In the court below, the demurrer was held to be frivolous, and, therefore, judgment was rendered for the amount claimed—sixty-two dollars and costs. Whereupon the defendants appealed.

There seems to be a curious want of direct authorities upon this question, but we have looked at it upon principle and we think it is perfectly clear, and there was no room for discussion about it. This was an absolute obligation. The authorities cited applied to cases of guarantee where the object was to fix the liability of the parties, it being collateral, and conditional upon certain other things which were to happen. Here the liability of the surety is absolute, and, although the bond runs in the language of ordinary bonds, it is an undertaking that the principal shall prosecute the appeal with effect, or pay, and the undertaking of the surety is that that shall be done. In all absolute undertakings it is settled that it is entirely unnecessary to allege a demand upon the defendant himself or upon the surety before you can bring an action, so that there was no necessity for a demand in order to fix the liability of the surety; his undertaking was absolute. There is in principle no room for doubt about this, and we hold, therefore, that the demurrer was frivolous. The judgment is affirmed.

JOHN H. SMITH
vs.
CATHARINE C. SMITH.

EQUITY. No. 8,839.

Decided October 12, 1885.
The CHIEF JUSTICE and Justices Co and MERRICK.

Where the cause complained of as a ground for divorce occurred in this District, and the party complained against resides here, this court has jurisdiction to grant a divorce although the petitioner is a non-resident.

STATEMENT OF THE CASE.

Appeal from an order striking from the files a petition for divorce on the ground of the non-residence of the petitioner.

This was a proceeding for divorce, instituted by the husband, who states in his petition that he is a resident of Baltimore,

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Maryland, and that the defendant has been a resident of the city of Washington in this District for nearly two years. The petition alleges that the parties were married in Cincinnati, Ohio, in 1868, and lived together until 1878, when the defendant left the petitioner; that afterwards she came to the city of Washington, and there committed adultery with a certain person named. The prayer of the petitioner was for an absolute divorce. The defendant filed a motion for an order striking the petition from the files. The grounds of the motion being "Because it appeared from said petition that the petitioner is a resident of the city of Baltimore, in the State of Maryland, and therefore this court has no jurisdiction in the premises." This motion being granted, the petitioner appealed.

The Revised Statutes of the District of Columbia, sec. 740, provide as follows: "No divorce shall be granted for any cause, which shall have occurred out of the District, unless the party applying for the same shall have resided within the District for two years next preceding the application."

CAMPBELL CARRINGTON and IRVING WILLIAMSON for petitioner:

In this case, the cause of the divorce occurred within this District, therefore section 740, R. S. D. C., does not apply.

It is well settled that, for the purpose of divorce, a wife may have a domicile separate from her husband, and the proceedings for a divorce may be instituted where the wife has her domicile. The place of marriage and of the offence, and the domicile of the husband are of no consequence. 2 Bish., Mar. & Div., 6th ed., secs. 125–9, *et seq.*; Cheever *vs.* Wilson, 9 Wall., 124; Giels *vs.* Giels, 20 Eng. L. & E., 1; Harten *vs.* Harten, 14 Pick., 181; Calvin *vs.* Reed, 5 Smith (Pa.) 375, 379.

EDWARDS & BARNARD for defendant.

Mr. Justice MERRICK delivered the opinion of the court:

The case of Smith *vs.* Smith, which was submitted to the court on briefs.

It might, perhaps, be unnecessary to do anything further than to say that the appellant has well covered the ground of his appeal and the reasons why the appeal should be sustained, in the brief which he has presented to this court. But it may be added for further explanation that this is a bill for a divorce, filed by a husband resident in Baltimore, against his wife who came to this jurisdiction, abandoned him, and then, according to the allegations of the bill, which are to be taken to be true for the purposes of the demurrer, committed adultery within the District of Columbia. The husband, still a resident of Baltimore, filed his bill in this jurisdiction for a divorce. The court below, upon demurrer, sustained the objection to the bill upon the ground that the complainant himself should be a resident of the District in order to vest jurisdiction. The court thinks that in that respect the court below committed error.

The jurisdiction of this court in cases of divorce, is conferred by section 766 of the Revised Statutes of the District: "The Supreme Court shall have jurisdiction in all applications for divorce."

Sections 731 to 740, define what shall be the causes of divorce; and section 740 then qualifies the general jurisdiction in these words: "No divorce shall be granted for any cause which shall have occurred out of the District, unless the party applying for the same shall have resided within the District for two years next preceding the application." Here is a negative pregnant declaring, as strongly as an affirmative statement could, that where the cause of divorce has occurred within the District, there is jurisdiction.

According to the statement of this bill, the adultery which is complained of, the gravamen of the charge, was committed by the wife within the District of Columbia, and the husband comes here and files his bill. The court thinks that this is an appropriate place, within the provisions of the statute, for him to file it, and not only so, but that this is the most appropriate place for him to file it, for the reason that the wife coming here has assumed a domicile, and for the purposes of controversies between the wife and husband, the wife may assert, and frequently has asserted, a domicile adversary to that of the husband. For the purposes arising out

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of the marriage, the benefits of the marriage, and the remedies conferred by law upon these parties, in respect of obligations arising out of the marriage, the domicile of the wife follows the domicile of the husband. But in adversary proceedings between husband and wife, it does not lie in the mouth of the wife to put her case upon the ground that this is not her domicile when she has voluntarily assumed the domicile, and has violated the matrimonial contract within it. In such a case, the assertion of the matrimonial domicile on her part should not be considered.

There are cases in the English reports, referred to in the brief, where jurisdiction has been maintained in similar cases, one being a case where there were cross-bills for divorce filed by the husband and wife who had been married in Scotland and the wife had gone to England. The wife's bill for divorce was filed in Scotland, and the husband's bill for divorce against her, was filed in England, and the English court entertained jurisdiction although the husband was domiciled in Scotland.

It seems entirely appropriate that the jurisdiction in such a case should be maintained here when the gravamen of the breach of the matrimonial contract has occurred within this jurisdiction, by the wife, and she remains within this District thereafter, for this reason: if the party against whom the divorce is sought, is not a resident within the jurisdiction where the demand is asserted, there are possibilities, which we know are often taken advantage of, of concocting testimony and of obtaining a divorce which might not have been obtained if the party charged with the wrong against the matrimonial contract, had been there to defend it. But when the bill is filed within the jurisdiction where the guilty party is, where the injury has been committed, and where all the witnesses to the transaction are to be found, it is most manifest that the purposes of justice can be best subserved by a thorough examination of all the facts at that place. The opportunity should be conferred where the cause of action originated, and where the case can be more effectually investigated and the truth obtained, so that there may be no collusion in obtaining a divorce in favor of any party.

Another consideration is this: so far as the husband is concerned he is only interested in the jurisdiction where he lives; but the public here in the District is interested in knowing whether her *status* is fraudulently maintained. A woman who is unworthy to stand and hold herself out as a wife, and who violates the morals of the community by acting as a wife ought not to act, should not be assisted in any way by the court, and this community is interested, and has a right to know whether she is a deserving and proper member of society, and her true *status* ought to be established, and the crimes, by means of which she has forfeited any claim to consideration in an orderly and moral community, should be unmasked.

For these considerations, it seems to the court not only proper to hold that the jurisdiction here is competent, but that it is an appropriate place to exercise jurisdiction under the statute.

The decree below will be reversed, and the case remanded for further proceedings.

Criminal Law: Arrest; Affidavit on Belief.

United States District Court for Ohio.

UNITED STATES V. HOWELL CARTER.

On motion to quash complaint.

H. R. PROBASCO, *U. S. Commissioner*: The complaint or affidavit is that "R. W. McAfee, post office inspector, has good reason to believe and does verily believe" that accused did, on certain dates, commit the offenses charged.

It is contended by counsel for accused, that the complaint does not charge him positively, or with the accuracy that is laid down in article 4 of the Constitution of the United States, which is as follows:

"The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized."

It is contended by counsel for the government that a complaint based upon belief is good and sufficient to authorize the issuing of a warrant of arrest by a commissioner, and that an uninterrupted practice for years would seem to legalize or authorize the proceeding here.

The complaint made in this case is in the

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same form that has been used and adopted both here and in other districts of the United States for many years. If the practice be illegal or bad, then "no degree of antiquity can give sanction to an usage bad in itself."

The constitution of the State of Ohio, upon the question of "seizures and arrests" is almost a verbatim copy of the Constitution of the United States, and section 7133 of the revised statutes of Ohio provides, that "where an affidavit charging any person with the commission of an offense is filed with a magistrate," he may issue a warrant, and the following section (7134) prescribes a form of affidavit which must be substantially used in making complaint of an infraction of law. The form prescribed is: "The State of Ohio, Hamilton county, ss. Before me, A. B., personally came C. D., who being duly sworn according to law, deposes and says, that on or about the —— day of ——, at the county of ——, one E. F. (Here describe the offence, etc.)" The word affidavit as used in the statute means, in the absence of any qualifying words, a declaration under oath, *positive* in its terms; and that this is a proper construction is confirmed by the language of the affidavit above described.

The law of Ohio provides that pleadings must be verified by affidavit, but a saving provision makes the belief of the party sufficient. The *belief* or *suspicion* of a party that certain facts exist, which may be grounds of attachment, is not sufficient in an affidavit to procure an order of attachment. The affidavit must *must show the existence* of some legal ground. An injunction will not be allowed upon an affidavit of mere belief; it must assert in categorical terms the facts therein alleged. And coming now to the requisites of affidavits and proofs necessary to cause the *arrest* of parties in civil proceedings, the statutes in every instance, and in most exacting terms require a "*showing*" of the "*existence*" of some legal ground.

If the framers of our laws have thrown such safeguards around *property*, and have made so technically difficult the seizure of the same, to what extent, then, were they justified in making inviolate the *liberty* of the *person?*

The germ of our national existence is liberty, and the liberty most to be prized is that of the person, and it is not to be wondered at that our national and State constitutions have declared that "no warrants shall issue but upon probable cause supported by oath or affirmation." Warrants may be issued by the court or by a magistrate, so that it cannot be, as is claimed by counsel for the government, that this provision does not apply to arrests made by magistrates, for "a criminal complaint on affidavit is as much a prosecution as a proceeding by indictment." 68 Ala., 525.

It is true it has been decided in Indiana, in Canatta v. The State, 31 Ind., 210, that "an affidavit on information and belief is sufficient to warrant the issuing of process and the arrest of the offender, but it is not sufficient in an indictment or information." The statutes of Indiana, section 1626, provides a form of affidavit which differs from that prescribed in Ohio, in that it uses the words "A. B. swears, that on or about the —— day of ——, 18—, at said county, C. D., as affiant verily believes (here state the offence)." The decision above referred to is, I presume, based upon this form; but inasmuch as the constitution of Indiana has adopted the article of the national Constitution in reference to "seizures and arrests," and its statutes, section 1625, provide that a "justice, on complaint on oath before him, charging any person with the commission of any felony or misdemeanor," shall issue his warrant, I cannot see what consistency there is between the section authorizing the warrant and that prescribing the affidavit, nor am I able to understand how arrests made upon such a complaint are in keeping with the constitution.

A justice of the peace is not justified in issuing a warrant upon the complaint of a person who at the time of the complaint says he knows nothing of the facts except upon information (State v. Good, 9 Lea, Tenn., 240); nor will a "complaint that one believes another to be a common prostitute," justify the magistrate proceeding on "the charge." People v. Pratt, 22 Hun, 300. And it is held that "an allegation that certain goods have been stolen, and that the complainant has probable cause to suspect, that B stole them," is "insufficient to justify a magistrate issuing a warrant for B's arrest." 18 Hun, 132. Indeed the court, in Blythe v. Tompkins, 2 Abb. Prac. Rep., go so far as to characterize a warrant reciting a complaint made upon the oath of three witnesses, that "they have good reason to believe and do believe," as having defects "so glaring" that "it is void on its face." In 1877, Mr. Justice Bradley being called upon for his advice in the matter of issuing warrants by United States commissioners, said: "After examination of the subject, we have come to the conclusion that such an affidavit" (one in which the witness deposes that he has reason to believe and does believe) "does not meet the requirements of the Constitution. . . . It is preferable that by exercising this degree of caution some

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guilty ones should escape, than that many innocent persons should be subjected to the expense and disgrace attendant upon being arrested upon a criminal charge; and this was undoubtedly the beneficent reason upon which the constitutional provision referred to was founded;" and thereupon an order or rule of court was entered as follows: "No warrant shall be issued by a commissioner of this court for the seizure or arrest of any person charged with a crime or offence against the laws of the United States, upon mere belief or suspicion of the person making the charge, but only upon probable cause, supported by oath or affirmation, in which shall be stated the facts within his own knowledge, and the grounds for such a belief or suspicion."

This, although a rule of court for another district, properly declares the law upon this subject, and there is every reason why it should be heeded in every district in the United States.

This ruling or decision was relied upon by the court in deciding The United States v. Tureaud, which was upon a motion to quash an information made upon information and belief. In this case Billings, J., says: "The probable cause supported by oath or affirmation prescribed by the fundamental laws of the United States is, then, the oaths or affidavits of those persons who of their own knowledge depose to the facts which constitute the offence."

The affidavit in this case is insufficient, and although this form of complaint has been in use for many years, it would seem to me that the practice ought to be corrected.

Maryland Court of Appeals.

WM. SEEMULLER & CO. *vs.* EDWARD FUCHS.

Agency.—An auctioneer who sells, without at the time of the sale disclosing the name of his principal, contracts personally, and is liable to an action for damages for not completing the contract.

ROBINSON, J.—One Weeks, being in the possession of a piano under a contract of hiring, sent it to the ware rooms of the appellants, who are auctioneers, to be sold. It was sold by them at auction without disclosing the name of the owner, and was bought by the appellee. The piano was subsequently replevied by the owner, and this suit is brought by the purchaser against the auctioneers to recover the money paid on account of the purchase.

Now we take the law to be well settled that one selling property as an agent without disclosing the name of the principal, binds himself personally. In such cases the purchaser has the right to rely upon the responsibility of the agent by whom the sale is made, and is not obliged to rely upon the responsibility of an unknown and perhaps irresponsible principal. The same rule applies to sales made by auctioneers. Whether the doctrine of implied warranty of title attaches to a sale made by an auctioneer, for the breach of which he would be liable for unliquidated damages, is a question not necessary to be decided in this case. Be this as it may, it is clear, we think, both on reason and authority, that if a sale is made by an auctioneer without disclosing the name of the owner, and the property is afterward claimed by a superior title, the purchaser may, in an action for money had and received, recover the purchase money of the auctioneer. There is in such a case an entire failure of consideration, and the sale having been made by the auctioneer, the only person known as vendor, it is but just and right that he should be answerable to the purchaser. There is certainly no hardship in this rule of law, because the auctioneer knows the person on account of whom the goods are sold, and has it in his power to protect himself against loss. Any other rule would not only be a fraud on purchasers, but destructive of all confidence in auction sales.

So far back as Hanson v. Roberdean, Peake's N. P. C., 120, Lord Kenyon said, "that though where an auctioneer names his principal, it is not proper that he should be liable to an action, yet it is a very different case when the auctioneer sells the commodity without saying on whose behalf he sells it; in such a case the purchaser is entitled to look to him personally for the completion of the contract."

We have not been able to find a single case in conflict with the rule thus laid down. On the contrary, it is sustained by all the subsequent decisions both in England and in this country. Jones v. Littledale, 6 Adolph. & Ellis, 486; Mills v. Hunt, 20 Wend., 431; Frank v. Lamond, 4 C. B., 637. And in all the text books the principle is laid down in the broadest terms. In his work on Agency, Judge Story says: "Thus where a contract is made with an auctioneer for the purchase of goods at public sale, and no disclosure is made of the principal on whose behalf the commodity is sold, the auctioneer will be liable to the purchaser to complete the contract, although from the nature of public sales it is plain he acts as agent only." Story on Agency, sec. 267.

In Babington on Auctions, Law Lib., Vol. 9, sec. 185, the rule is thus laid down: "Where an auctioneer does not disclose the name of his principal at the time of the sale, he is per-

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sonally liable to an action for damages for not completing the contract."

The cases relied on by the appellants are cases in which the sales were made by administrators, executors or trustees, or by sheriffs or other officials in which the nature and character of the sales and the objects for which they are made are well known to the purchaser. Besides one making a sale in an official capacity cannot, for reasons of public policy, be held personally responsible for otherwise. "No one," as Judge Archer says in Mackbee v. Gardner, 2 H. & G., 176, "could be induced to accept the office." It can hardly be said that an auctioneer is, in this sense, a public officer. There is a tax, it is true, upon the receipts of sales made by him, and he is appointed and required to give bond, but the tax is laid for the purpose of revenue, and the appointment and requirement to give bond are provisions of the law to secure the prompt payment of the taxes thus levied. his business is essentially a private one—he may sell or not as he pleases—and is not in any respect under the slightest obligations to the public.

For these reasons the judgment below must be affirmed.

Interest Reipublicæ ut sit Finis Litium.

Another well worn belief—another legal axiom—has been thrown open to discussion. If A sues B and after a hard fought contest succeeds, can B in a subsequent action avoid estoppel by pleading that the judgment was obtained by perjury or fraud?

If A sues B for goods sold and delivered, and B, being unable to find his receipt, is beaten, it is clear law that he has no remedy, if the time for obtaining a new trial is past. This was so held in the leading case of Marriott v. Hampton, 2 Sm. L. C. (8th ed.), 421.

Even where there has been no trial in the action, but a writ has been issued, money paid even under protest cannot be recovered; although in this case the element of fraud may sometimes alter the general rule. Brown v. McKinally, 1 Esp., 279; Hamlet v. Richardson, 9 Bing., 644; Milnes v. Duncan, 6 B. & C., 679.

In Flower v. Lloyd, 10 Ch. Div., 327, the plaintiff sought to have what he alleged to have been a fraudulent judgment set aside. The plaintiffs had brought an action against the defendants to restrain infringements of a patent process for printing on metal plates. Under an order of the court an expert appointed by the plaintiffs was permitted to inspect the defendants' work, the defendants undertaking to show him the whole process. Upon the evidence thus acquired the plaintiffs were defeated in the action. It was afterward alleged that the expert had been deceived by the defendants and an attempt was made upon this ground to impeach the judgment. The proof failed, but Lord Justice Baggallay said: "Whilst I am fully sensible of the evils and inconveniences which must arise from reopening what are apparently final judgments between litigant parties, I desire to reserve for myself an opportunity of fully considering the question how, having regard to general principles and authority, it will be proper to deal with cases, if and when any such arise, in which it shall be clearly proved that a judgment has been obtained by the fraud of one of the parties, which judgment but for such fraud would have been in favor of the other party. I should much regret to feel myself compelled to hold that the court had no power to deprive the successful but fraudulent party of the advantages to be derived from what he had so obtained by fraud."

Lord Justice James, speaking for Lord Justice Thesiger as well as himself, relies upon the old maxim, the caption of this article: "Where is litigation to end if a judgment obtained in an action fought out adversely between two litigants *sui juris* and at arm's length could be set aside by a fresh action on the ground that perjury had been committed in the first action, or that false answers had been given to interrogations, or a misleading production of documents, or of a machine or of a process had been given? There are hundreds of actions tried every year in which the evidence is irreconcilably conflicting and must be on the one side or the other wilfully and corruptly perjured. In this case, if the plaintiffs had sustained on this appeal the judgment in their favor, the present defendants in their turn might bring a fresh action to set that judgment aside on the ground of perjury of the principal witness and subornation of perjury, and so the parties might go on alternately *ad infinitum*. . . . Perjuries, falsehoods, frauds, when detected, must be punished and punished severely; but in their desire to prevent parties litigant from obtaining any benefit from such foul means, the court must not forget the evils which may arise from opening such new sources of litigation, amongst such evils, not the least being that it would be certain to multiply indefinitely the mass of those very perjuries, falsehoods and frauds."

This reasoning seems to us unanswerable, but the doubt having been raised it is not long in being made use of. In Stewart v. Sutton, 8 Ont. R., 341, the point came up on

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demurrer and should, we think, have been settled one way or another by the judge who heard the argument. He took, however, the extraordinary course of refusing to decide the point, directing the parties to go to trial and see whether the facts as alleged were true, before deciding whether their truth or falsity made any difference in the case.—*Manitoba Law Journal.*

De Minimis Non Curat Lex.

Yet the law troubles itself about very small things when it regulates the entry of a bailiff into a house to levy a distress. He may not break open an outer door, but if the outer door be open he may break open an inner one. If a window be open, he can get in through it; but he must not break a pane to undo the hasp of the window. This has long been settled. In these latter days it has been definitely decided that if he finds a window partly open, he may open it a little more to climb into the house. This was the ruling of Justices Manisty and Field in Crabtree v. Robinson, L. Rep., 15 Q. B. Div., 312. In an action for illegal distress it appeared that the defendants, the landlord and his bailiff, found a window partly open, but not open far enough for the bailiff to get into the defaulter's house. Accordingly the bailiff raised the window, got in and so opened the front door for the distress. Question, Was the distress legal? Answer, Yes. The upshot of the many cases on the subject amounts to this. To make an entry through a doorway the latch of the door may be lifted although the door be closed. But in the case of a window an entry can only be made if the window is to some extent open, and for the purpose of entry in such a case the window may be further opened. But an entry may not be made by opening a window which is shut but not fastened. Nash v. Lucas, L. Rep. 2, Q. B., 590. Nor *a fortiori*, when the window is fastened by means of a hasp. Hancock v. Austin, 14 C. B. N. S., 634: 8 L. T., 429. It is satisfactory to have a clear and incontrovertible decision on this latest point—that of the partly open window.—*London Law Times.*

Burial of Suicides.

Shakespeare had a remarkable knowledge of the law of the burial of suicides, outside of the famous case of Hales v. Pettit, from which some of the arguments of the gravediggers are unquestionably derived. No law writer has yet stated the English law relating to suicides so completely as is done in Hamlet. . . . The three kinds of burials given suicides in the church yard are shown—one by the gravedigger, as was customary in some parts of England and Wales, where the grave was 'out of the sanctuary' and not 'straight,' that is, east and west, and another was by Christian burial by the priest, when it was in the parish church yard, and the other was by the coroner when not at cross roads, marked by a stake, where stones, etc., were thrown at it. Blackstone only mentions the burial of suicides at cross roads, and law students are led to believe that the law was the same all over England and Wales in that particular. It was only a legal custom and did not prevail generally. A "straight" grave was one running east and west, parallel with the church, but those who had not Christian burial were laid north and south. By the canon law, whether Ophelia was sane or insane, if she deliberately caused her own death, she was not entitled to the burial rites of the church, for churchmen contended then as now that in all cases of suicide the deceased should be denied the burial rites of the church, and the clergy ought not to be bound by the decision of the coroner's jury in such cases.—*Columbia Jurist.*

Revocation of Agency.

AHERN *vs.* BAKER.

Supreme Court of Minnesota.

Agency: Revocation; Sale by one Real Estate Broker.—Several real estate agents may be employed for the sale of the same land, and a sale by one operates as a revocation of the authority of the others.

Appeal from Ramsey county.

VANDERBURG, J., in delivering the opinion of the court, said: The defendant, on September 9, 1884, specially authorized one Wheeler, as his agent, to sell the real property in controversy, and to execute a contract for the sale of the same. He, in like manner, on the same day, empowered one Fairchild to sell the same land; the authority of the agent in each instance being limited to the particular transaction named. On the same day Wheeler effected a sale of the land, which was consummated by a conveyance. Subsequently, on September 10th, Fairchild, as agent for the defendant, and having no notice of the previous sale made by Wheeler, also contracted to sell the same land to this plaintiff, who, upon the defendant's refusal to perform on his part, brings this action for damages for breach of contract. This is a case of special agency, and there is nothing in the case going to show that the plaintiff would be estopped from setting up a revocation of the agency prior to the sale by Fairchild. A revocation may be shown by the death of the principal,

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the destruction of the subject matter, or the determination of his estate by a sale, as well as by express notice. The plaintiff had a right to employ several agents, and the act of one in making a sale would preclude the others without any notice, unless the nature of his contract with them required it. In dealing with the agent the plaintiff took the risk of the revocation of his agency. 1 Parsons on Cont., 71.

Order affirmed.

WHEN Sir John Malcolm paid his second visit to Persia as envoy from the government of India, he was accompanied by a secretary who subsequently published an entertaining work entitled "Sketches of Persia," from which we extract the following:

"Some years ago the city of Ispahan was governed by a brother of the celebrated Hajee Ibrahim, whose family at that time held several of the first offices in the kingdom; and I heard that minister tell the envoy the following anecdote:

"A shopkeeper, he said, went to his brother to represent that he could not pay an impost. 'You must pay it, like others,' said the governor, 'or leave the city.' 'Where can I go?' asked the man. 'To Shiraz or Casban.' 'Your nephew rules the one city and your brother the other.' 'Go to the king and complain, if you like.' 'Your brother, the Hajee is prime minister.' 'Then go to hell,' said the enraged governor. 'Hajee Merhoom, the pious pilgrim, your father, is dead—' retorted the undaunted Ispahanee. 'My friend, said the governor bursting into a laugh, 'I will pay the impost myself, since you declare my family keep you from all redress both in this world and the next.'"

As a pendant to the above we quote a story from "The Modern Syrians," a work published in 1845. The writer, speaking of the mufti of Aleppo, says:

"The mufti was sitting in the court of justice, when a blind man whom he had nonsuited, said, in a tone of great exasperation, 'I cannot see you sitting on the bench, but, *inshallah*, I shall see you in hell.' The mufti, instead of resenting this contempt of court, said, with great composure, 'Ah, my good man, you will see many a greater man than myself there.'"

PROF. BELL, of telephone fame, says the time is coming when people will be able to see as well as to hear one another at long distances. This is encouraging news to people who have been wishing to see their friends farther.

NOTES OF RECENT DECISIONS.

1. *Agent Committing Fraud: Estoppel.*—Where an agent of an insurance company, acting within the general scope of the business intrusted to him, whose duty it is to fill up blank applications, deceives and misleads the assured, who is unable to read, by deliberately writing false answers in the application, and procuring the signature of the assured thereto, after he had given full and correct answers to the questions asked, the company receiving the premium, and for whom the agent was acting, will, in the case of a loss, be held responsible for the misrepresentations, and will be estopped from insisting on the breach of warranty and the untruth of the representations.

2. *Fraud: Innocent Party.*—If any party is to suffer by reason of the wrongdoing of such general agent, it should be the company who clothed him with authority, and for whom he was acting, rather than the assured who acted in good faith, and innocently became a party to the contract.

3. *Insurance Agency: Condition in Policy.*—An insurance company cannot escape the responsibility of a mistake or fraud committed by an agent who is its trusted representative, with authority to solicit insurance, fill up and forward applications therefor, and to complete and execute insurance contracts in their behalf, by an ambiguous provision obscurely printed in the policy, that "it is a part of this contract that any person other than the assured who may have procured this insurance to be taken by this company, shall be deemed to be the agent of the assured named in the policy, and not of the company under any circumstances whatever, or in any manner relating to this insurance." Such a condition involves a legal payment and is invalid.

4. *Verdict Ordered by Court: Conflicting Evidence.*—Where a party fails to show something essential to the maintenance of the action or defence, and where there are no disputed facts for the jury to pass upon, the court may direct a verdict; but if the evidence fairly tends to establish the plaintiff's cause of action, the court cannot withdraw the case from the jury and direct a verdict in favor of the defendant, but must leave the weight and credit of the testimony with the jury.

5. *Motion Equivalent to Demurrer.*—A motion to direct a verdict in favor of the defendant, is substantially equivalent to a demurrer to the plaintiff's evidence.

Judgment reversed. [Sullivan v. Phœnix Ins. Co. of Brooklyn, S. C. Kans., Oct., 1885.]

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Wills: 1. *Evidence.*—A testator having disinherited his daughter for the reason assigned in the will that she had married an "unprincipled scoundrel," in a contest over the will in which the daughter sought to set it aside upon the ground that her father was a monomaniac as to her and her husband and his relations toward them, testimony as to the general character of her husband was competent as tending to show that one of the reasons given by the father for excluding his daughter was without any reasonable foundation, and could only have been conceived by a disordered mind.

2. *Opinions.*—A witness having testified that he had formed an opinion that the testator was not rational, both from what he had seen and heard, the fact that after the lapse of a long time he could not recall specific transactions with the testator or separate the rumor from what he himself had seen, did not authorize the rejection of his opinion as testimony.

3. *Burden of Proof: Instructions.*—When the due execution of a paper consistent upon its face and apparently rational in its provisions has been proved as a will, and is assailed upon the grounds of incapacity in the maker, the burden shifts to the contestants. It was, therefore, error in this case to instruct the jury that the burden of proof was on the propounders of the will, but the error was cured by another instruction, telling the jury that they must believe from the *preponderance* of the evidence that the testator was a monomaniac as to his daughter and her husband and their marriage when he made the will, and that if it was "produced or affected" by such monomania, they must find against it. Nor was it necessary to explain to the jury the meaning of the word "monomania," as they could not well have misunderstood it. [Taylor, &c., v. Minor. Marion Cir. Ct. May 7, 1885. Opin. by Holt, J., Ct. App., aff.]

Jury: Ordinary Care and Prudence; Carriers of Passengers by Water; Sailors as Experts; Right of Passenger to Follow Direction of Officer of Boat.—Ordinary care and prudence in common emergencies is not a question for experts, and unless there is conflict, it may often be taken from the jury as a matter of universal judgment. Passenger traffic on river steamers is not so exclusively a maritime business that sailors alone are qualified to testify as to its methods and duties; but usage may sometimes be shown as bearing thereon. Passengers about to embark upon a boat, and with little time to spare, are justified in assuming, if they do so in good faith, that they may safely follow the directions of the officers of the boat in getting on, unless there is very obvious danger in doing so. And if it takes an expert to define the duty of the officers, the presumption in the passenger's favor is all the stronger. [Clinton v. Root, S. C. Mich., 24 N. W. Rep., 667.]

Life Insurance: What Beneficiary may be Named by Member of Lutual Assurance Society; What he Takes.—The charter of the Supreme Lodge Knights of Honor, which provides for the payment of a sum of money upon the death of a member "to his family or as he may direct," has been correctly construed by the order as allowing the member to designate as his beneficiary any person, whether a member of his family or not. The privilege thus reserved to the member is a power of appointment of a recipient of a fund, which power is revocable, with the consent of the order and in conformity to its rules and regulations, at the will of the member who has made such an appointment. The beneficiary thus appointed by a member of the order has no vested interest in fund by reason of the appointment, but takes an interest subject to the power of the member to revoke the appointment, with the consent of the order, and in conformity to its rules and regulations. [Gentry v. Supreme L. K. of H., U. S. C. C. Ind., July, 1885.]

Municipal Corporation: Negligence; Removal of Person with Infectious Disease.—A person with a contagious disease may be removed from a city, but the municipal officers, in performing the duty, are bound to take every reasonable precaution for his safety, and for negligence in this respect, resulting in injury, they are liable in damages. [Aaron v. Broiles, S. C. Texas, 20 Rep., 476.]

Evidence: Res Gestæ; Lease not Signed.—In the course of a negotiation for a lease a paper was partly written by the defendant and handed by him to plaintiff, and by him interlined and returned to defendant, but neither signed it. On the trial question was whether the terms of the lease were those mentioned in the paper only, or were their terms agreed upon outside of it. *Held*, the paper was admissible as *res gestæ*. Freeman v. Bartlett, S. C. N. J., 1885.]

Inn-keeper and Guest: Recoupment.—In a suit by an inn-keeper against a guest for accommodations, the guest can recoup for articles stolen from his room, if the loss was not attributable to the failure of the guest to comply with the regulations of the inn. [Burbank v. Chapin, S. J. C. Mass., 3 Daily Law Rec. (Boston), 3.]

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U. S. Supreme Court Proceedings.

Nov. 11, 1885.

No. 47. Jacob P. Effinger v. James Kenney, trustee, etc.; and No. 216. James Kenney v. Jacob P. Effinger; argued.

No. 50. A. R. Shepherd v. John F. May; argued.

No. 51. Henry W. Putnam v. George C. Hutchison. No. 52. Henry W. Putnam v. John A. Lomax. No. 53, Henry W. Putnam v. Chas. G. Hutchison; and No. 54. Henry W. Putnam v. Chas G. Hutchison; dismissed with costs per stipulation.

No. 56. The St. Louis, Iron Mountain and Southern Railway Company v. Hugh McGee; argued.

Nov. 12, 1885.

John H. Whiting, of New Haven, Conn.; George P. Smith, of Humboldt, Kan., and John Mitchell, of Des Moines, Iowa, were admitted to practice.

No. 57. The Missouri Pacific Railway Company v. Vincent Terry; No. 593. The Missouri Pacific Railway Company v. Peter Humes; argument concluded.

No. 58. John Patch v. Elias E. White; argued.

No. 59. P. R. Bochlen v. Richard Arthurs; submitted.

Nov. 13, 1885.

No. 127. Judson O. Brown v. Benjamin F. Green; No. 128. John S. Burhans v. Benjamin F. Green; No. 129. John Darsh v. Benjamin F. Green; No. 130. Chas. E. Dunham v. Benjamin F. Green, No. 131. Theodore F. French v. Benjamin F. Green; No. 132. William Gale v. Benjamin F. Green; No. 133. James T. Pierson v. Benjamin F. Green; No. 134. John N. Schenck v. Benjamin F. Green; No. 135. Augustus Vandeventer v. Benjamin F. Green, and No. 139. Phineas M. French v. Benjamin F. Green; dismissed per stipulation.

No. 136. Gordon McKay, trustee, etc., v. The Scott Gale Sewing Machine Company et al.; No. 137. Gordon McKay, trustee, etc., v. David Lehman et al.; dismissed per stipulation.

No. 60. T. W. Thompson v. Allen County et al.; argued.

No. 61. The Liverpool and London and Globe Insurance Company v. Amelia A. Gunther, executrix, etc.; argument concluded.

Nov. 16, 1885.

E. F. Dulin, of Greenup, Ky.; Hiram Knowles, of Butte Co., Mont., and Peter Mitchell, of New York City, were admitted to practice.

No. 35. Humphrey Bell et al. v. The First Nat. Bank of Chicago. Judgment reversed with costs. Opinion by Mr. Justice Blatchford.

No. 33. J. B. Camors et al., etc., v. Edmund H. Watts.

No. 176. Edmund H. Watts v. J. B. Camors et al., etc. Decree affirmed. Opinion by Mr. Justice Gray.

No. 497. The Cincinnati, New Orleans and Texas Pacific R. R. Co. v. The Commonweaith of Kentuckey.

No. 498. The Louisville and Nashville R. R. Co. v. Same.

No. 499. The Chesapeake, Ohio and Southwestern R. R. Co. v. Same. Judgments affirmed with costs. Opinion by Mr. Justice Matthews. (Mr Justice Blatchford did not sit in these cases nor take any part in their decision.)

No. 19. James Eachus v. Joshua B. Broomall. Decree affirmed with costs. Opinion by Mr. Justice Matthews.

No. 30. Dana Sargent et al., etc., v. John A. Helton, sheriff, etc. Decree affirmed with costs. Opinion by Mr. Justice Woods.

No. 4. The Knickerbocker Life Insurance Co. v. P. A. Pendleton et al. Judgment reversed with costs. Opinion by Mr. Justice Bradley.

No. 31. The Merchants' Exchange Nat. Bank, of the City of New York v. The Board of Chosen Freeholders of Bergen County. Decree affirmed with costs. Opinion by Mr. Justice Field.

No. 564. Edward Deffebach v. Robert Hawke. Judgment affirmed with costs. Opinion by Mr. Justice Field.

No. 563. Philander E. Sparks et al. v. Moses Pierce et al. Judgment affirmed with costs. Opinion by Mr. Justice Field.

No. 4. Original. The State of Alabama v. Isaac T. Burr et al. Demurrer to declaration sustained. Opinion by Mr. Chief Justice Waite.

No. 886. The Eastern Band of Cherokee Indians v. the U. S. et al. Motion to advance granted.

No. 1191. The U. S., ex rel. Robert Carrick, v. L. Q. C. Lamar, Secretary, etc. Motion to advance granted.

No. 1192. R. M. Oberteufer et al. v. W. H. Robertson, collector, etc. Cause assigned for argument.

No. 1133. H. Bradford v. H. C. Miller et al., etc. Motion for order under rule 15, par. 3, granted.

No 1019. E. A. Marsh et al. v. Nichols, Shepard & Co. Motion to dismiss denied.

No. 974. Ex parte Wm. L. Royall (No. 1), No. 975. Ex parte Wm. L. Royall (No. 2), No. 1009. Wm. H. Sands v. E. G. Edmunds, treasurer, etc., No. 1010. Wm. L. Royall v. State of Virginia. No. 1011. R. B. Chaffin v. Wm Taylor. Reassigned for argument.

No. 62. George Place et al. v. Norwich & New York Transportation Co. Argument continued.

Nov. 17, 1885.

No. 62. Same. Argnment concluded.

No. 63. H. G. C. Paulsen, No. 352. Gottifred Bachmann v. the Chesapeake and Ohio Ry. Co. et al. Argument concluded,

No 64. H. R. Balzer et al. v. The Raleigh and Augusta Air Line R. R. Co. Argued.

No. 65 The Winchester & Partridge M'f'g Co. v. Edward Creary et al. Argument commenced.

No. 690. The Northern Pacific R. R. Co. v. Iver L. Rockne, Company Treasurer, &c. Submitted under the twentieth rule.

No. 957. R. Van Brocklin et al. v. B. P. Anderson, commissioner, &c. et al. Submitted under twentieth rule.

No 962. Henry O. Harkness v. Russell & Co. Submitted under twentieh rule.

No. 1168. George A. Bowman et al. v. Chicago & Northwestern Ry. Co. Submitted under twentieth rule.

Nov. 18, 1885.

Leslie C. Cornish, of Augusta, Me., and Edward C. Eichleberger, of Baltimore, Md., were admitted to practice.

No. 913. Charles C. Harrison et al v. Edwin A. Merritt, collector, etc. Submitted under twentieth rule.

No. 65. The Winchester & Partridge M'f'g Co. v. Edward Creary et al. Argument concluded.

No. 66. Clay County, Ia., v. The U. S., ex rel. Hugh McAleer et al., administrator, etc. Argued.

No. 67. Asa C. Call v. Henry H. Palmer. Submitted.

No. 68. Mrs. Laura Ellen Jones, widow, etc., v. Watson Van Benthuysen. Submitted.

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SUPREME COURT OF THE DISTRICT OF COLUMBIA

GENERAL TERM.

Nov. 16, 1885.

Duvall v. Mitchell et al. Decree below affirmed with costs.

Adjourned to November 23.

IN EQUITY.—New Suits.

Nov. 11, 1885.

9694. Mary J. Young et al v. Jane Hart et al. To sell. Com sols, Hagner & Maddox.

Nov. 12, 1885.

9695. Thomas E. Welsh v. Mary L. Welsh. Defts sol, H. B. Moulton.

9696. Marvin Eastwood v. Marshall Clark et al. For discovery and sale. Com sol, C. G. Berryman.

9697. Annie Clayton v. Enoch M. Clayton. For divorce. Com sol, J. A. Smith.

Nov. 13, 1885

9698. Arthur B Claxton v Mary A. Donn et al, To substitute trustee. Com sol, W. E. Edmonston

9699 Annie Milne et al. v Hannah Edwards et al. For injunction and acct, Com sol, E. A. Newman.

9700. Charles A. Beavans et al, v. Margaretta May et al. Vacation of deeds Com sol, W. Wheeler.

Nov. 14, 1885

9701. Maria L. Woodward v. the Dist. of Col. Com sol, A. K Browne.

9702. Chas. W. Huguely v. Same. Com sol, Same.

9703. Lucy Davidson v. Same. Com sol, Same.

9704. Mary A. Donn et al v. Wm. G Clary et al. For partition. Com sol, W. E Edmonston.

Nov. 16, 1885.

9705. Henry A. Wagner v. Eliza D. Wagner. For divorce. Com sol, J. A. Smith.

Nov. 18, 1885.

9706. The Potomac Steamboat Co. v. Thos. Parker et al. Com sol, John Selden.

9707. Anthony Hyde et al. v. Ellen S. Bartley et al. Com sol, Henry S Matthews.

9708 Eliza D. Lerch v. Jacob Lerch. Divorce. Com sol, John E. Norris.

9709. Virginia Morris v. George C. Chipman et al. Injunction, &c. Com sol, Wm. A. Coulter.

9710. Winfred Kelly v. James E. Divver et al. Injunction. Com sol, A. C. Bradley.

Nov. 19, 1885

9711. Martha Tinney et al. v. Matilda Robinson. For acct,, &c. Com sol. W. T. Wiswall.

Nov. 20 1885

9712. Home Ins. Co., of N. Y., v. Evening Critic Pub. Co Interpleader. Com sols, Edwards & Barnard,

9713. The N. W. Nat. Ins. Co., of Milwaukee, Wis, v. Same. Interpleader. Com sols, Same

9714. John Grinder v, Josephine Dulaney et al, To substitute trustee. Com sol, John E. McNally

9715 Same v. Henry Bailey et al To substitute trustee. Com sol, Same.

CIRCUIT COURT.—New Suits at Law

Nov 13, 1885.

26490. Thomas McCann v The B & O. R R. Co. Damages, $2,000. Piffs atty. E. Totten.

26491. Same v. Thos. E Waggaman. Damages, $5.000. Piffs atty, Same.

Nov. 14, 1885

26492. Edward L. Williams v. Joseph R. Fitzgerald. Certiorari. Defts atty, F. W. Jones.

Nov. 16, 1825.

26493. Ella Horrigan v. Mary G. Bradley et al. Issues from probate. Piffs atty, F. Beall.

Nov. 17, 1885.

26494. Wm. Cameron et al. v. The Dist. of Col, Ejectment. Piffs attys, McPherson & Carlisle.

26495. A. Schultz & Co v. S. G, Bouis & Co. Note, &c., $300.02. Piffs atty, Wm. H. Dennis.

Nov. 18, 1885

26496. Charles E Gibbs v. Wm. C. Hill. Note, $725. Piffs atty. J. J. Johnson

26497. Christian Aeurich v. Charles C. M. Loeffler et al. Note, $420. Piffs atty, Leon Tobriner.

Nov. 19, 1885

26498. Robert Morrison trustee, v. David A. Windsor. Ejectment. Piffs atty, T. Q. Hildebrandt.

26499. Enoch Ridgway v. The Dist. of Col. Damages. Piffs atty, D. W. Glassie.

26500. Wm. Cameron et al. v. Chas. N. Lapham. Ejectment. Piffs attys. McPherson & Carlisle.

26501. Same v. Wm. Ward. Ejectment. Piffs attys, Same.

Nov. 20, 1885.

26502 James E. Aiken l. Samuel C. Reid. Acct, $6000. Piffs atts, J. A. Smith.

26503. Richard W. Tyler v. The Penn R R. Co. Damages, $20.000. Piffs attys, Davidge and Lincoln

26504. James E. Clark v. Joseph B. Ehrmantraut. Notes, $289.99. Piffs attys, Edwards & Barnard

PROBATE COURT.—Justice Hagner.

Nov. 20, 1885.

Estate of Elizabeth Jones. Will admitted to probate and record.

Estate of Wm. Pinkney Brooke. Letters of Administration issued to Wm. E. Clarke. Bond, $400

Estate of Wm. E, Schoenborn. Citation issued against administratrix

Estate of David McIntire Amended petition of Charles McIntire for issues to contest will.

In re orphans of Geo. H. Miller. Rule on Elizabeth McEvoy, guardian, to show cause.

Estate o Margaret Corbett. Executrix ordered to return inventory of the estate within ten days. Also to settle her accounts

JAMES L. ANDEM,

STENOGRAPHER, U. S. COMMISSIONER,

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Washington, D. C.

Legal Notices.

THIS IS TO GIVE NOTICE:

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John F. Hanna, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of November next: they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 17th day of November, 1885.

E. CECELIA HANNA,

JAS. M. JOHNSTON, Solicitor 47 Administratrix

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term in Equity.

MARY R. SQUIRES et al.
v.
JOHN F. GARNER et al. } 9551. Equity docket 25.

E. H Thomas and Henry Wise Garnett, trustees in the above-entitled cause, having reported the sale of the property mentioned in these proceedings, being sub-lot thirty (30) in square four hundred (400), to W P H Crews, for forty-six hundred dollars ($4,600.00), and that the purchaser has complied with terms of sale and offers to pay all the purchase-money in cash:

It is, this 17th day of November, A. D. 1885, ordered, that the said sale be, and the same hereby is, confirmed and ratified, and the purchaser have leave to pay all the purchase money in cash, unless cause to the contrary be shown on or before the 17th day of December next.

Provided that a copy of this order be published in the Washington Law Reporter once a week for three (3) successive weeks prior to the said day last mentioned.

A. B. HAGNER.

True Copy. Test: 47 R. J. MEIGS, Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia. November 14, 1885.

JAMES A. THOMAS et al. v. ARTHUR F. THOMAS et al. } 9565. Eq. Doc. 25.

This cause coming on to be heard upon the report of the trustee filed herein on the 14th day of November, A. D. 1885 it is, this 14th day of November, A. D 1885, by the Court, ordered, adjudged and decreed, that the sale of the real estate mentioned in the bill filed herein to Mary Clarke, reported by the the trustee, Chapin Brown, in the report above named, be and the same is hereby ratified and confirmed unless cause to the contrary be shown on or before the 14th day of December, A. D 1885.

Provided a copy of this order be published once a week for three successive weeks in the Washington Law Reporter previous to said 14th day of December, A. D 1885.

A. B HAGNER.

A true copy. Test: 47 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscribers of the District of Columbia have obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Benedict Milburn, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscribers on or before the 13th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 13th day of November, 1885.

WM. G. HENDERSON,
WM. F. MATTINGLY,
47 Administrators.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of John Brent, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 16th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of November, 1885.

WILLIAM L. FREEMAN,
A. K. BROWNE, Solicitor 47 Executor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 21st day of November, 1885.

JOHN G LEE v. WILLIAM P. LEE et al. } No. 9659. Equity Docket, 25.

On motion of the plaintiff, by Mr. Chapin Brown, his solicitor, it is, this 21st day of November, A. D 1885. ordered that the defendant William P. Lee, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
True copy. Test: 47 R. J MEIGS, Clerk.

THIS IS TO GIVE NOICE

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration d b n.c.t a, on the personal estate of Benjamin Alvord late of the District of Columbia, decd.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber, on or before the 20th day of November next they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of November, 1885.

47 BENJ ALVORD.
GEO. E. HAMILTON, Solicitor. Administrator d.b.n.c.t a

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Emily L. Alvord, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 20th day of November next; they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 20th day of November, 1885.

47 BENJ. ALVORD.
GEO. E. HAMILTON, Solicitor. Executor.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, this 9th day of November, 1885.

CALVIN NASH et al. v. ROBERT NASH et al. } 8928. Eq. Doc. 24.

Andrew A. Lipscomb, trustee in this cause, having reported he sale of all the real estate and premises described in these proceedings to James Fraser, esquire, for the sum of $2,214.98 cash; but by an error the order nisi heretofore issued, recites their sale to Charles Fraser: It is, this 9th day of November, A. D 1885, ordered by the court that the said sale to said James Fraser, as reported by said trustee, be ratified and confirmed unless cause to the contrary be shown on or before the 9th day of December, A D. 1885; provided a copy of this decree be published once a week for three successive weeks before that day in the Washington Law Reporter.

By the Court D. K. CARTTER, Ch. Justice.
A true copy Test: 46 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

MARY T. DAYTON v. CORNELIA H. DAYTON et al. } 7801 Eq. Doc. 21.

On consideration of the report of James M Johnston, trustee in said cause, filed the 30th day of September, 1885, it is, by the court, this ninth day of November, 1885. Ordered that the sale of original Lot numbered eleven (11) in Square numbered six hundred and thirty six (636) to John T Arms, esquire, at and for the sum of twenty four cents per square foot, payable in cash, be ratified and confirmed unless cause to the contrary be shown on or before the 9th day of December, 1885; and provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before the said day.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 46 R. J. MEIGS, Clerk

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 10th day of November, 1885.

THOMAS H. JONES v. CASSIE M. JONES. } No. 9651. Equity Doc. 25.

Application for divorce on the ground of cruelty, etc.

On motion of the plaintiff, by Mr. T. J. Mackey, his solicitor, it is ordered that the defendant, Cassie M Jones, cause her appearance to be entered herein on or before the first rule-day, occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. D. K. CARTTER, Ch. Justice.
A true copy. 46 Test: R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 11th day of November, 1885.

HENRY MASON v. REBECCA MASON. } No. 9668. Equity.

On motion of the plaintiff, by Mr Thomas F. Miller, his solicitor, it is ordered that the defendant, Rebecca Mason, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. D. K. CARTTER, Ch. Justice.
True copy. Test: 46 R. J MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 11th day of November, 1885.

AARON H LEAR v. JOHN INGLE CASH. } No. 9688. Equity.

On motion of the plaintiff, by Mr. Chas. A. Elliot, his solicitor, it is ordered that the defendant, John Ingle Cash, made defendant in a suit to quiet title to parts of original Lots Nos. 13 and 14 in Square No. 733, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day, otherwise the cause will be proceeded with as in case of default.

By the Court. D. K CARTTER, Ch. Justice.
A true copy Test: 46 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William Edelen, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 9th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of November, 1885.

WILLIAM SMALL, Adm'r.
46 Room 27 Pacific Building, Washington, D. C.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business. November 13th, 1885

In the matter of the Last Will of Sarah J. Thompson, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters on the Estate of the said deceased, has this day been made by Elenor Thompson.

All persons interested are hereby notified to appear in this court on Friday, the 4th day of December next at 12 o'clock m., to show cause why the said Will should not be proved and admitted to Probate and Letters on the estate of said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B. HAGNER, Justice.
Test: 46 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court business, November 13, 1885.

In the matter of the Estate of Mary J. Wright, late of Berkeley Springs, State of West Virginia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by D. Pratt Wright and Philo B. Wright.

All persons interested are hereby notified to appear in this court on Friday the 4th day of December next at 12o'clock, m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 46 H. J. RAMSDELL, Register of Wills.
E. A. NEWMAN, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Holding a Special Term for Orphans' Court Business. November 16th, 1885.

In the matter of the Estate of Guynilda H. Schley, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by her mother and sisters, to be issued to Charles L. Du Bois.

All persons interested are hereby notified to appear in this court on Friday, the 4th day of December next at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 46 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court business. November 13th, 1885.

In the case of William J. Miller, Administrator of Joseph L. Savage, deceased, the Administrator aforesaid has, with the approval of the Court appointed Friday, the 11th day of December A D 1885, at 11 o'clock, a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 46 H. J. RAMSDELL, Register of Wills.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of John C. P. de Krafft, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of November next; they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 13th day of November, 1885.

ELIZABETH S. DE KRAFFT,
46 Administratrix c. t. a.

Legal Notices.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration on the personal estate of Rebecca H Young, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of November, 1885.

45 HENRY HURT, Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. The 5th day of November, 1885.

SUSETTE MCNALLY
v. } No. 9621.
THOMAS MCNALLY.

On motion of the plaintiff, by Mr. Campbell Carrington, her solicitor, it is ordered that the defendant, Thomas McNally, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 45 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Thomas Clarkson Folger, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of October, 1884.

45 JAMES H. MANDEVILLE,
Executor of Thomas Clarkson Folger, deceased.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

SAMUEL A. PEUGH,
Complainant,
v. } 1713. Eq Doc. 9.
HENRY S. DAVIS,
Defendant.

Henry E Davis, the trustee in the above entitled cause, having reported to the court the sales by him on September 26th, 1885, of lots numbered from four (4) to ten (10), both inclusive, in square numbered nine hundred and ten (910), in the City of Washington, District of Columbia, at and for prices aggregating $3,642 60:

It is, this 6th day of November, A. D 1885, ordered, that the said sales so reported be, and the same hereby are, ratified and confirmed, unless cause to the contrary thereof be shown on or before the 6th day of December next;

Provided, that a copy of this order be published in the Washington Law Reporter once a Week for three (3) weeks prior to the said last mentioned day.

A. B. HAGNER.
A true copy. Test: 45 R. J MEIGS, clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

JOHN H. KING, Executor, &c.
v. } No. 9617. Equity.
WILLIAM BROWN.

Upon consideration of the report of Rutledge Willson, trustee, for the sale of the real estate involved in the above-entitled cause, filed on the 6th day of N vember, A D. 1885:

It is, this 6th day of November, A D 1885, ordered, that the sale therein reported be ratified and confirmed, unless cause to the contrary thereof be shown on or before the 7th day of December, A. D. 1885.

Provided, that a copy of this order be inserted in the Washington Law Reporter once a week for three successive weeks before the said day.

By the Court. A. B. HAGNER.
A true Copy Test: 45 R. J MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 29th day of October, 1885

ANNIE L. CAMP
v. } No. 9665.
ELISHA CAMP.

Application for divorce on the ground of desertion.

On motion of the plaintiff, by Mrs. Belva A. Lockwood, his solicitor, is it ordered that the defendant, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 44 R. J. MEIGS, Clerk.

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Legal Notices.

IN THE SUHREME COURT OF THE DISTRICT OF Columbia, the 18th day of November, 1885.

WILLIE MCGUIRE, JOHN MCGUIRE and JONATHAN B. H. SMITH. v. MARY GANNON. } No 9677. Equity.

On motion of the plaintiff, by Mr. John J. Johnson, her solicitor, it is ordered that the defendants, Willie McGuire, John McGuire and Jonathan B. H. Smith, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day, otherwise the cause will be proceeded with as in case of default.

By the Court: A B. HAGNER, Justice, &c.
True copy. Test: 46 R J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. November 13th, 1885.

In the matter of the Estate of Barbara Koch, late of the District of Columbia, deceased

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by George C. Walker.

All persons interested are hereby notified to appear in this Court on Friday, the 4th day of December next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court A. B. HAGNER, Justice.
Test 46 H. J. RAMSDELL, Register of Wills.
SIMON WOLF, Solicitor.

THIS IS TO GIVE NOTICE

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Jane Campbell, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of November, 1885.
FRED. W. JONES.
46 Executor.

THIS IS TO GIVE NOTICE

That the subscribers, of the District of Columbia have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Levin M. Powell, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscribers, on or before the 6th day of November next; they may otherwise by law be excluded from all benefit of said estate.

Given under our hands this 6th day of November 1885.
CHARLES D. DRAKE,
W B WEBB,
39 Executors.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Edward W. Tiers, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 30th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of October, 1885.
46 CLAIRE E. TIERS, Adm'x.
CHAS. PELHAM, 52 Corcoran Building, Solicitor.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business Letters of Administration on the personal estate of Rollins Thorne, late of Peru, South America, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 30th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of October, 1885.
45 JOHN F. ENNIS.
SHELLABARGER & WILSON, Solicitors. Administrator.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business October 30th, 1885.

In the case of Campbell Carrington and Irving Williamson, Administrators c. t. a. of John S. Ricks, deceased, the Administrators c. t a. aforesaid have, with the approval of the court, appointed Friday, the 20th day of November A. D 1885, at 11 o'clock a m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Adm'rs c. t. a. will take the benefit of the law against them. Provided. a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 44 H. J RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. November 6, 1885.

In the case of Brainard H. Warner, Executor of Richard W. Carter, deceased, the Executor aforesaid has, with the approval of the court, appointed Friday, the 4th day of December, A D. 1885, at 11 o'clock a m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test 45 H J. RAMSDELL, Register of Wills.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Ygnacio M. Zangroniz, late of Havana, Cuba, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of November next; they may otherwise by law be excluded from all benefit of the said estate,

Given under my hand this 4th day of November, 1885.
B. F. LEIGHTON,
E. E HOLMAN, Solicitor. 45 Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 17th day of October, 1885.

CHARLES F. CLAGETT v. FANNY E. CLAGETT. } No. 9462. Eq. Doc. 25.

Application for divorce on the charge of desertion

On motion of the plaintiff, by Mr. M. J. Ford, his solicitor, it is ordered that the defendant, Fanny E Clagett, cause her appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
True copy. Test: 45 R. J MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

DAVID S. GITTINGS and others v. SILLIMAN BLAGDEN and another. } 9367. Ex. Doc. 24.

The trustees in the above entitled cause having reported that they were unable to make sale at public auction of lots numbered eight, ten, (excepting therefrom about one-tenth of an acre), twelve, thirty, thirty-two, thirty-three, thirty-four, thirty-five, and thirty-six, of the tract of land known as "Argyle, Cowal and Lorn," in the County of Washington, in the District of Columbia, according to the subdivision thereof made by the Commissioners in Equity Cause No 4967, in this Court, of Blagden and others against Blagden and others; but that since their offer of said property at public auction, they have received from Arthur W. Machen, and have accepted, subject to ratification by this Court, a bid for said property of fifteen thousand dollars.

It is ordered by the Court, this 7th day of November, A. D 1885, that the sale of said lots of land to said Machen for $15,000, be ratified and confirmed, unless cause to the contrary be shown on or before the 5th day of December, A. D. 1885.

Provided a copy of this order be inserted in the Washington Law Reporter once a week for three successive weeks before the said 5th day of December, A. D. 1885.

A B HAGNER.
A true copy. Test: 45 R. J. MEIGS, Clerk.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Harriet N. Gonzales, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 30th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of October, 1885.

CHARLES W. HENSHAW,
H. B. MOULTON, Solicitor. 44 Administrator.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters of Administration on the personal estate of William Tyler, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 30th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of October, 1885.

44 W. BOWIE TYLER,
WM. D. CASSIN, Solicitor. Administrator.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Sophronia Dille, late of the District of Columbia, deceased

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 27th day of October, next; they may otherwise by law be excluded from all benefit of the said estate,

Given under my hand this 27th day of October, 1885.

C. PARKINSON, M. D.,
44 Executor, 1003 O St., N. W.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 30th day of October, 1885.

EMMA T. MORRIS
v. } No. 9667. Doc. 25.
ANTHONY P. MORRIS.

On motion of the plaintiff, by Mr. E. B Hay, her solicitor, it is ordered that the defendant, Anthony P. Morris, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 44 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

CHALES A. BEST
v. } 8375. Eq. Doc. 22.
PETER BEST et al.

The trustee in the above entitled cause, having reported to the Court that he has made sale of lot F, in square 51, containing a front of twenty feet on north side of M street near corner of Fifth street, northwest, by a depth of one hundred feet:

It is, this 26th day of October, 1885, ordered, adjudged and decreed, that said sale for $1200, cash, balance in twelve months, at 6 per cent interest, at ninety cents per square foot, be ratified and confirmed, unless cause to the contrary be shown on or before the 26th day of November, 1885.

Provided a copy of this order be inserted in the Washington Law Reporter once a week for three successive weeks before the 26th day of November.

A. B. HAGNER.
A true copy. Test: 44 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 26th day of October, 1885.

SARAH C. PALMER
v. } 9381. Eq. Doc. 24.
LILLIAN M. PALMER.

Upon consideration of the trustee's report of the sale of the real estate therein described, it is ordered adjudged and decreed by the Court that said sale be, and the same is, hereby ratified and confirmed, unless cause to the contrary be shown on or before the 16th day of November, 1885.

Provided a copy of this order be published once a week for three successive weeks in the Washington Law Reporter. The trustee reports that the real estate therein described sold for the sum of $1,105.00.

A. B. HAGNER.
A true copy 44 Test: R. J. MEIGS, Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

CHARLOTTE A. MARTIN et al.
v. } No. 9433. Equity.
WILLIAM S. BUCHLY et al.

James S. Edwards, trustee herein, having reported the following sales, to wit:

To Charlotte A. Martin, a part of lots 14 and 15, in square 263 and improvements known as 1360, on B street, southwest, for three thousand and sixty dollars ($3,060);

To Charles H. Parker, a part of lot 16, in square 696, and improvements, known as Nos 905 and 907, on First street, southeast, for seven hundred and fifty dollars ($750);

To John Miller, the lots 5, 6 and 7, in the square known as square east of square 642, being unimproved, for seven hundred and sixty dollars ($760);

To Thomas Kirby the middle one-third part of lot 7 in square 457 and improvements, known as No. 641 on D street, northwest, for seven thousand, seven and thirty-five dollars ($7,735);

All of which parcels of real estate and premises are more particularly described in the decree for sale, and proceeding in this cause:

It is, this 29th day of October, A. D 1885, ordered that said sales be confirmed unless cause to the contrary be shown on or before the 29th day of November, 1885

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said last-mentioned date.

A. B. HAGNER.
True copy Test: 44 R. J MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

HARRIET L. DAVIS et al.
v. } No. 9425. Equity.
HENRIETTA DAVIS et al.

James S. Edwards, trustee herein, having reported a sale of part of lots 4 and 5, square 468, and improvements being the premises known as Nos. 621 and 623 H street, south-west, and particularly described in the proceedings in this cause, to the complainant, Harriet L. Davis, for the sum of four thousand, four hundred and sixty-five dollars ($4,465):

It is, this 30th day of October, A. D. 1885, ordered, that said sales be confirmed, unless cause to the contrary be shown on or before the 30th day of November, 1885.

Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said last-mentioned date.

A. B. HAGNER.
A true copy. Test: 44 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Adminstration on the personal estate of William B. Crompton, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 31st day of October, 1885.

44 CHARLES WALTER,
D. E. CAHILL, Solicitor. Administrator.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Miguel Bou, late of Barcelona, Spain, deceased

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 30th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of October, 1885.

44 B. F. LEIGHTON
E. E HOLMAN, Solicitor. Administrator.

THIS IS TO GIVE NOTICE

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Cosme de la Torriente, late of Matanzas, Cuba, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of October, 1885.

B. F. LEIGHTON,
B. E. HOLMAN, Solicitor. 44 Administrator.

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Washington Law Reporter

WASHINGTON - - - - - November 28, 1885.

GEORGE B. CORKHILL - - EDITOR

THE decision in Wolsheimer v. Revinus, of the Court of Appeals of Maryland, holding that the reservation of a reasonable fee for the draughtsman of the deed for its preparation, is such a preference in a deed of assignment for the benefit of creditors as is forbidden by the insolvent act of 1884, and will render the deed void, is an absurd specimen of legal construction, and certainly cannot receive any sanction. The dissenting opinion of Judges Bryan and Ritchie that the deed is a part of the necessary and legitimate machinery of distributing the insolvent's estate, and that the drafting of it is a part of the costs of administration, is unquestionably correct.

IT IS stated that the recent fire at Galveston was of incendiary origin and traceable to the operations and threats of the Knights of Labor, whose strike and "boycotting" menaced just such a disaster as has now occurred. The question is one of special interest, as it may be the occasion for determining how far the authorities of a city are responsible for damages arising from the turbulent proceeding claimed to be under the direction of these so-called Knights of Labor.

IN THE case of The People v. Mackin, who was found guilty on a charge of perjury in the criminal court of Chicago and sentenced to five years in the penitentiary, the Supreme Court of Illinois has rendered a decision affirming the judgment of the court below. The principal points upon which the case has turned appear to be questions of fact merely.

The only material question of law in the case is as to where a witness, who does not on his examination claim his privilege from giving evidence on the ground that it may tend to criminate himself and consents to testify, and testifies falsely, whether perjury may be assigned thereon. The court decides that it can be, citing State v. Maxwell, 28 La. An., 361.

The questions of fact were as to whether a case was made out against the accused by the force of the testimony of two witnesses and whether the evidence of the accused was material to the issue, both of which the court decide in the affirmative. So that it was the testimony of the two Wrights that convicted Mackin.

The general impression has been that Mackin was on trial for alleged frauds in regard to the election in Chicago last fall, and there has been a desire for his conviction, if guilty, as an example to evil-doers in such cases; but the offence charged against him seems to have had no connection with the charge of directly interfering with elections, but was an indictment for perjury in giving evidence in a case where the grand jury claimed to be investigating alleged election frauds.

Book Notice.

THE PRINCIPLES OF SALE; their application to sale of an undivided part. By ROBERT RALSTON, of the Philadelphia Bar. REES, WELSH & CO., Philedelphia, Publishers.

This volume is a compact and well written essay upon the subject. The author has given a reference to over one hundred and fifty cases, which in itself would make the book valuable to the profession. It is worth fully double its cost for the convenience in having the principles so briefly stated and the authorities so judiciously collected.

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Supreme Court District of Columbia

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

JOHN P. JACKSON
vs.
HENRY E. DAVIS, Administrator.

EQUITY. No. 7,990.

Decided June 15, 1885.
Justices COX, JAMES and MERRICK sitting.

Where one of two sureties on a bond given to the United States pays the debt of the insolvent principle, he is entitled, in his claim for contribution, to be subrogated to the priority of the United States over the other creditors of the estate of his co-surety.

STATEMENT OF THE CASE.

Bill in equity by one surety against the administrator of his co-surety to enforce contribution. The substantial averments of the bill were as follows:

That on the 2d of September, 1865, Oscar H. Burbridge, as principal, and Philip B. Fouke, John C. Forbes, and the complainant, John P. Jackson, as sureties, executed a joint and several bond in $25,000 to the United States, conditioned for the faithful discharge by Burbridge of the duties of the office of Supervising Special Agent of the Treasury Department, and the due accounting for all public moneys and property coming into his hands by virtue of that office.

That Burbridge entered upon the discharge of the duties of his office and failed to account for a sum of public money greatly in excess of the conditions of the bond.

That the United States entered suit against the parties to the bond, but process was had only on Burbridge and complainant.

That Burbridge and complainant appeared and defended the suit, but verdict was rendered and judgment entered against them, November 22, 1875, for $36,560.50, with interest.

That complainant subsequently paid the sum of $30,466.47 on this judgment and procured it to be entered satisfied, the entry of satisfaction showing the amount actually paid.

That Burbridge and Forbes, one of the sureties, at the time of the breach of the condition of the bond were, and ever since have been, and still are, utterly insolvent and unable to pay the penalty of the bond, or any part thereof.

That neither Burbridge, nor Forbes, nor Fouke, has ever contributed anything to reimburse complainant for his payment in satisfaction of the penalty of the said bond.

That Fouke, the defendant's intestate, died solvent, and when the assets of his estate are reduced to possession, they will suffice to discharge the debts of the estate.

That the estate of the said Fouke is liable to the complainant for a contribution to the extent of one moiety of the amount paid by the complainant to the United States in satisfaction of the bond; and that by virtue of his said payment to the United States, the complainant is subrogated to all the rights originally pertaining to the United States as a creditor of said estate under the bond; and that by virtue of such subrogation he is made a preferred creditor of said estate, and in the event the assets thereof should prove insufficient to discharge its liabilites, he is entitled to have his demand paid in preference to any and all other liabilities of said estate. The bill concluded with a prayer that the defendant's administrator be decreed to pay to complainant one moiety of the amount paid by complainant in satisfaction of the penalty of the bond, and that the payment be made in preference to any payments to any other creditor of the estate.

The defendant answered, calling for strict proof. Testimony was taken in support of the averments of the bill .The case was then certified to the General Term to be there heard in the first instance. A number of points were raised by the defendant on the hearing, such as the Statute of Limitations, non-joinder of parties, &c., but were overruled by the court upon consultation on the bench, the Chief Justice announcing that the court would hear argument only on the question of the right of the plaintiff to be subrogated to the priority of the United States.

RANDOLPH COYLE for complainant:

1. Complainant is subrogated to the rights of the United States against the estate of his co-surety, and even if the estate be not solvent, his claim has priority of all others as far as the assets will go

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towards paying it, to an amount not to exceed one moiety of that paid by complainant.

Section 3466 of the Revised Statutes of the United States provides that, "whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied."

Under this provision of law, the United States were entitled to priority of payment out of the estate of Fouke (upon his death insolvent) of the debt for which he was bound as surety of Burbridge, and the debt having been paid by complainant, he "is permitted on the principle of subrogation to stand in the shoes of the United States, and to recover and receive from the estate of said decedent [intestate] what the United States would have been entitled to receive therefrom if the payment aforesaid had not been made by" the complainant. Robertson *vs.* Trigg's Adm'r, 32 Gratt., 76, 85.

The case last cited is, so far as it is in point, a cross-bill for contribution by two sureties on an official bond given to the United States, against the estate of a co-surety, in which the doctrines of contribution and subrogation are carefully reviewed.

Referring to section 3468, R. S., providing substitution of the surety who has paid the debt of the principal, to the right of priority of the United States against the estate of the principal, and considering the argument therefrom "that because the statute makes no express provision for substitution of a surety to the rights of the creditor against a co-surety, it was intended to exclude such substitution on the principle, *expressio unius est exclusio alterius*," the court say:

"We are not prepared to say that the remedy provided by the statute, for the surety against his principal, would not have existed under the general rules of equity, as administered in the federal courts, independently of any statutory provision. Whether that be so or not, the rule of substitution for the purpose of enforcing contribution between sureties is too well established in equity jurisprudence to be set aside by implication of less force than an express statutory denial of the remedy."

The question of the right of subrogation as between co-sureties was exhaustively treated by Chief Justice Marshall in Lidderdale *vs.* Robinson, 2 Brock., 160, and affirmed by the Supreme Court in 12 Wheat., 594. See also case of Hess' Estate, 69 Penn. St., 275; Fleming *vs.* Beaver, 2 Rawle, 128; Smith *vs.* Rumsey, 33 Mich., 183; Felton *vs.* Bissell, 25 Minn., 15; Howell *vs.* Reams, 73 N. C,, 391; Cuyler *vs.* Ensworth, 6 Paige, 32; Cheesborough *vs.* Millard, 1 Johns. Ch., 409, 413; Scribner *vs.* Hickok, 4 Johns. Ch., 531; Lawrence *vs.* Cornett, 4 Johns. Ch., 545; Croft *vs.* Moore, 9 Watts, 451.

II. What proportion of the amount paid by him is complainant entitled to recover from defendant?

In equity the rule (differing from that at law) is that the proportion is to be determined by the number of solvent sureties. "Thus [at law], if there are four sureties, and one is insolvent, a solvent surety who pays the whole debt can recover only one-fourth part thereof (and not a third part) against the other two solvent sureties. But in a court of equity he will be entitled to recover one-third part of the debt against each of them; for in equity the insolvent's share is apportioned among all the other solvent sureties." Story's Eq. Jur., § 496, and cases cited. Robertson *vs.*. Trigg's Adm'r, 32 Gratt., 76.

RIDDLE, DAVIS & PADGETT for defendant:

The complainant is not subrogated to the priority of the United States against the defendant's intestate.

The priority of the United States, or of a surety, in such cases depends upon sections 3465 and 3468, R. S., which are as follows:

SEC. 3466. "Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due the United States shall be first satisfied; and the priority hereby established

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shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed."

SEC. 3468. "Whenever the principal in any bond given to the United States is insolvent, or whenever, such principal being deceased, his estate and effects come to the hands of his executor, administrator or assignee, are insufficient for the payment of his debts, and, in either of such cases, any surety on the bond, or the executor, administrator, or assignee of such surety pays to the United States, the money due upon such bond, such surety, his executor, administrator or assignee, shall have the like priority for the recovery and receipt of the moneys out of the estate and effects of such insolvent or deceased principal as is secured to the United States; and may bring and maintain a suit upon the bond, in law or in equity, in his own name, for the recovery of all moneys paid thereon."

The right of priority of the United States does not rest in any perogative, as in the case of the crown in England; but it is exclusively founded on the provisions of the statutes. U. S. v. State Bank, 6 Pet., 29.

And in case of insolvency, the United States are not entitled to priority of payment, unless the insolvency be a legal and known insolvency, manifested by some notorious act of the debtor pursuant to law. It must be a technical insolvency, of one of the three sorts indicated by sec. 3466. Prince *vs.* Bartlett, 8 Cranch, 431; Thelusson *vs.* Smith, 2 Wh., 396; Conard *vs.* Ins. Co., 1 Pet., 439; Beaston *vs.* Farmers' Bank, 12 Pet., 102; U. S. *vs.* McLellan, 3 Sumn., 351, 352; U. S. *vs.* Wilkinson, 5 Dill., 275; U. S. *vs.* King, Wal., C. C., 12.

So, the right of a surety to priority depends exclusively on the statute provisions. Without the statute, a surety would at best rank as an ordinary specialty creditor in every case; the statute improves his condition in one particular, viz., it promotes him to the priority of the United States *as against his principal.*

Thus it is held that a surety who pays a bond to the United States, has the same priority as the United States against the principal, or his estate, but no other advantages secured to the United States. U. S. *vs.* Hunter, 5 Mason, 62; 5 Pet., 173; U. S. *vs.* Preston, 4 Wash. C. C., 446.

Nor is the question in anywise affected by the general equity principle that entitles a surety paying a debt to succeed to the rights of the creditor. That principle has reference to such advantages as the creditor may have in the form of the instrument of indebtedness, or lien or other security. The position of a surety in that respect is wholly outside that of a surety within the contemplation of the statute. The advantage secured to the surety in ordinary rests upon certain general equitable principles, which were clearly ascertained and established at the time the statute was passed. But the statute makes no reference to them, and its terms exclude all consideration of them in the particular case provided for.

A surety who pays a bond is not entitled to be subrogated to the rights of the United States against his co-surety, so as to give his demand for contribution a preference over other creditors; nor on general principles of equity can he claim to stand in the place of the United States as adainst the co-surety. Pollock *vs.* Pratt, 2 Wash. C. C., 490; Bank of S. C. *vs.* Adger, 2 Hill's Ch. (S. C.), 262.

Mr. Justice MERRICK delivered the opinion of the court.

This was a bill in equity filed for the purpose of subjecting the estate of an insolvent decedent to the claims of the co-surety of the decedent upon the bond of a principal, which had been given to the United States for certain duties in the collection of moneys. The principal had become insolvent, other sureties had become insolvent, the defendant's intestate died, but, before his death, the liability became fixed by the co-surety paying the entire claim. He then came into this court by his bill in equity and claimed the priority of the United States by way of substitution, under the ordinary doctrine of substitution and subrogation held

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by courts of chancery. And the only question in the case is this: Whether, under such circumstances, a co-surety is entitled to be subrogated to the priority of the United States over the other creditors of the estate of the decedent.

The statute gives to the United States priority over all creditors to the estate of the principal debtor, and also gives to the sureties of the principal debtor this right of priority over the estate of the principal debtor where they have paid the debt. But the statute is silent as to the right of subrogation to that priority as between the estates of co-sureties.

The question to be solved here is whether, under the circumstances, one co-surety is entitled, as against the estate of a deceased co-surety, to the assertion of this priority over the other creditors for his benefit to the extent of the contributory share of the deceased surety which was paid by him to the United States.

Upon an examination of the authorities it seems to be entirely clear that the right exists. There is one case reported in 32d Grattan, 76, the case of Robinson *vs.* Trigg's Administrator, where the precise question was presented, and there that very learned court, relying upon the antecedent decisions, to one of which I shall advert in a moment, used this language (p. 87):

"Whether or not the remedy provided by the statute for the surety against his principal would have existed independent of the statute, yet the rule of substitution for enforcement of contribution as between sureties is too well established in equity jurisprudence to be set aside by implication of less force than an express statutory denial of the remedy."

This case and the other cases are based upon the decision of Chief Justice Marshall, to be found in the opinion in the case of Lidderdale *vs* Robinson, reported in 2 Brockenborough, 168—the opinion, I should say, of Chief Justice Marshall himself, because there was a difference of opinion between him and the circuit court judge which was certified to the United States Supreme Court, and there the opinion of the Chief Justice was affirmed without hesitation. Chief Justice Marshall, in that so certified opinion, says that the right of subrogation (passing now ordinary co-sureties—he was not speaking about them, but the particular doctrine of substitution) stands, as respects the claim of the surety who pays the debt, upon the principles incontrovertibly established to every purpose in the place of the creditor.

That case went to the Supreme Court of the United States, and the decision of the Chief Justice was affirmed there in the broadest and most unqualified manner, Mr. Justice Johnson deliverine the opinion of the court, comments there (I quote the case chiefly for that purpose) upon the alleged argument of hardship on behalf of the other creditors in case the doctrine of substitution should be allowed, and he answers it most conclusively in the words which I shall read. I read from the case of Lidderdale *vs.* Robinson, 12 Wheaton, 595. He says:

"The priority of the holder of a bill of exchange as well against the estates of the endorsers as the drawer, is unquestionable, but the other creditors insist that, as between the co-indorsers, the rights of Smith against the estate of Robinson must be determined by the nature of the action to which he would have been put at law to recover back what he paid over his moiety, that is, *assumpsit* on simple contract Both on principle and authority we are induced to think otherwise. What have the creditors of Robinson to oomplain of? They are only referred back to the situation in which they were before they were relieved by the application of Smith's funds to the payment of the bill of exchange. If it still remained in the hands of the holder unsatisfied his priority would be unquestionable, and if retired from that state by the money of Smith, it is but right that Smith should have refunded to him that sum which they, without that payment, would certainly have been obliged to relinquish."

So in this case. What have the creditors of Fouke's estate to complain of? They are only remitted back to the condition in which they were before the money of Jackson, the complainant, was applied to relieving and paying the debt for which they were bound. Fouke's estate would have been swept away by the principal creditor, the United States, the

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co-surety being compelled to come in and relieve that debt, they are in no worse estate than they would have been if the United States had asserted its own rights in the first instance.

After commenting upon the general doctrine, and referring to the fact that the decision might have been supposed to have been based upon the law of Virginia recognizing the right of substitution, and for the purpose of excluding that idea, Justice Johnson, then, in his opinion on page 598, uses this emphatic language:

"That this, then, is the settled law of the State, in which this contract and this cause originated, cannot be doubted. But we feel no inclination to place our decision upon that restricted ground since we are well satisfied with its correctness on general principles and on authorities of great respectability in other States."

In the course of my investigations I have discovered a decision in the State of Maryland which was not referred to in the argument, and which I quote along with the case in 110th United States, for the purpose of showing that the right of substitution applies equally well where the right of preference has originated out of prerogative, as where it originates out of positive statute or out of contract. The doctrine is broad enough to cover all cases, and it stands upon the broad claim of absolute right, not upon contract, not upon statute, not upon prerogative, but upon the broad claim of the right in equity as between man and man; that one who has been subjected, by the action of the dominant creditor, over whose will he has no control, to an undue proportion of the burden, should be relieved by being placed in the condition of the dominant creditor for the purpose of working out the equities as between himself and his co-sureties.

The case of Orem's Executrix *vs* Wrightson, reported in 51st Maryland, at page 34, was a case where parties had become sureties upon a tax collector's bond, and one of them had been obliged to pay the whole. He then sued the insolvent estate of his deceased surety, and he was, by the decision of the Court of Appeals, held entitled to succeed to the priority of the State of Maryland. The court, at the bottom of page 42, after showing that in many previous cases the right of priority had been vindicated by the Court of Appeals of the State as the prerogative right and the flower of sovereignty, says:

"In the present case, there being no liens in the way, the State was clearly entitled to be first paid out of the assets in the hands of the administrator of Leeke. The next question to be examined is, to what rights, if any, the appellees, as sureties of Leeke, are subrogated by their payment to the State of the debt due by him, at the time of his death, as principal debtor. The doctrines of subrogation, or substitution as it is also termed, is a peculiar feature of equity. It is not founded in contract, but has its origin in a sense of natural justice. So soon as a surety pays the debt of the principal debtor, equity subrogates him to the place of creditor, and gives him every right, lien and security to which the creditor could have resorted for the payment of his debt."

Then he goes on and discusses all the cases, from Deering *vs.* Earl of Winchester, down. Then at the bottom of page 45 and on page 46, he says:

"If, therefore, the creditor could have rightfully claimed a preference in the distribution of assets, the same preference will be upheld by way of subrogation for the benefit of the surety. Is a different rule to be applied where the State is a creditor?"

That is to say where the right of priority flows out of perogative or out of a statute. He continues:

"We can see no reason why it should be. It is not necessary to inquire how or in what manner the State's right to rank as a preferred creditor is derived, whether it is a prerogative right derived from the common law, or whether it has been conferred by statute. As it is said in some of the cases to which we have referred, equity, in applying the doctrine of subrogation, looks not to form but to the substance and essence of the transaction. It looks to the debt which is to be paid, add not to the hand which may happen to hold it, and will see that the fund charged with its payment shall be so applied."

(*Concluded next issue.*)

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The Effect in any State of Foreign Judgments in Sister States.

Foreign Divorces.

It is a well-settled principle of inter-State law that, in the absence of statutory enactments or constitutional provisions to the contrary, the tribunals of the different States are for all purposes foreign to each other.

I.—THE EFFECT OF A FOREIGN JUDGMENT AT COMMON LAW.

The effect of such judgments depends upon the spirit of comity, and in proportion as the latter is broad or narrow the former is increased or diminished.

Lord Hardwicke, in 1793, declared that where a foreign court had jurisdiction, its judgment was conclusive. Boucher v. Lawson, Cas. temp., Hard., 89.

This liberal doctrine was afterwards disregarded by Lord Mansfield, who held that such judgments were examinable. Walker v. Witter, 1 Douglas, 1, 6.

His opinion was followed more or less closely till 1818, when Lord Nottingham, in the case of Kennedy v. Earl of Cassilis, 2 Swans, 313, 326, gave utterance to the rule which maintains in England at the present day, that a judgment of a foreign court is conclusive as to all questions therein decided, and cannot be re-examined on the merits. See Martin v. Nichols, 3 Simons, 458.

At the time of the Revolution, and of our adoption of the English common law, the particularistic doctrine of Lord Mansfield prevailed in England, and the decisions that foreign judgments were only *prima facie* evidence of the debt had the weight of authority in our courts. In New York, Pennsylvania, New Jersey, Massachusetts, New Hampshire, Vermont, Maryland and Tennessee, foreign judgments were held to be examinable. Phillips' Evidence, Cowen, Hill & Edwards' notes, Wol. 2, p. *186.

This principle did not long continue to be the law in this State; it was discountenanced in Taylor v. Boyden, 8 Johns., 133, and was abrogated in Lazier v. Westcott, 26 N. Y., 148; Konitzky v. Myer, 49 N. Y., 571.

In Ohio and Indiana foreign judgments are deemed conclusive. R. R. Co. v. Wynne, 14 Ind., 385; Bank v. Harding, 5 Hamm., 545.

The American decisions, however, which hold that they are only *prima facie* evidence of the facts decided, are confined to cases where an action is brought on the judgment, or where it is set up as a bar. When it comes incidentally in question it is conclusive as to the merits.

II.—CONSTITUTIONAL PROVISIONS AND STATUTORY ENACTMENTS APPLICABLE TO JUDGMENTS OF SISTER STATES AND THE EFFECT THEREOF.

The United States Constitution, Art. 4, sec. 1, provides: "Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State. And Congress may by general laws prescribe the manner in which such acts, records and proceedings be proved and the effect thereof."

Substantially the same provision was contained in the 4th article of the Articles of Confederation.

In pursuance of such authority Congress has prescribed the means by which such proceedings shall be proved and has given them "such faith and credit in every court within the United States as they have by law or usage in the courts of the State from which they are taken." Rev. Stat. U. S., sec. 905.

By the term, "full faith and credit," &c., is meant that the judgment of a sister State is conclusive on the merits; the object of the provisions being to change by statute the tendency of the judicial decisions of the time which were holding judgments to be disputable. That the judgment of a sister State has no extra-territorial force as a judgment, but merely is a debt of record which may be enforced by action. That the mode of authentication prescribed by the statute is the means whereby such judgments shall become entitled to "full faith and credit" in other States. Mills v. Duryee, 7 Cranch, 481; M'Elmoyle v. Cohen, 13 Pet., 312; Savings Inst. v. Gerber, 34 N. J. Eq., 130.

These provisions, in States like New York, where the judgments of all courts out of the State are conclusive, had but little effect. They merely added a new mode whereby such judgments might be prepared for admission as evidence, the common law method still remaining in force. Dean v. Chapin, 22 Mich., 275,

But in States like Massachuseets, where foreign judgments were disputable, they revolutionized the system as far as the judgments of sister States were concerned, making the latter conclusive when exemplified in accordance with the grovisions of the statute. But only such judgments as are capable of being thus exemplified can in any case be conclusive on the merits. Robinson v. Prescott, 4 N. H., 450.

Where the doctrine of New York prevails, including most of the western States, all judgments are conclusive on the merits. In the others only those authenticated as prescribed by the act of Congress are binding,

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and unauthenticated judgments are merely *prima facie*, and can be investigated *de novo*; all other judgments are conclusive on the merits.

III.—CAUSES FOR WHICH THEY MAY BE IMPEACHED.

1. *Want of jurisdiction of the subject matter.* It is always a good defence to an action on a judgment, that the court which rendered it did not have jurisdiction of the subject matter. Thompson v. Whitman, 18 Wall., 457.

When a judgment of a court of superior jurisdiction is in question, jurisdiction of the subject matter is presumed if the action was one known to the procedure of the common law. Galpin v. Page, 18 Wall., 350.

Where the record, however, makes an averment concerning a jurisdictional fact, no presumption will be taken inconsistent with such averment. Same case.

If the judgment of a court of inferior jurisdiction is in question, or a judgment of a court of superior jurisdiction rendered in the exercise of special statutory powers, all facts necessary to give jurisdiction must be proved by their appearance on the recored. Sears v. Terry, 26 Conn., 273; Morse v. Presby, 5 Foster (N. H.), 313; Ransom v. Williams, 2 Wall., 313; Harvey v. Tyler, Id., 328, 335; Thomas v. Robinson, 3 Wend., 367.

By a "court of superior jurisdiction" is meant one having general cognizance of all cases which may arise, such as was enjoyed by the courts of king's bench, common pleas, and exchequer in England. It has been held that the "court of common pleas" of another State, in the absence of proof to the contrary, will be presumed to have superior jurisdiction This shows the power of a name. Pringle v. Woolworth, 90 N. Y., 502.

The subject matter is the abstract question involved. If the court has jurisdiction of that, its judgment is binding. Whether a certain state of facts warrant a judgment in the exercise of its jurisdiction, rests solely within the discretion of the court deciding the issue, and cannot be questioned in another State. Hunt v. Hunt, 72 N. Y., 217, 229; Jordan. v. Van Epps, 85 N. Y., 427, 436.

If a statute of a sister State gives the court which rendered the judgment jurisdiction, that judgment will be binding here, because our courts will not presume to decide as to the constitutionality of the statute of another State. Hunt v. Hunt, *supra*.

But if the statute has been declared unconstitutional in its own State, a judgment under it has no force elsewhere. Simonds v. Simonds, 103 Mass., 572.

2. *Want of jurisdiction of the parties.* If the court had jurisdiction of the subject matter the next inquiry is whether it properly acquired jurisdiction of the case. This may be obtained in several ways:

1st. By service of protest within the State.

All persons within the State are amenable to its laws. All persons within its limits therefore are subject to its process, whether they be citizens owing a permanent allegiance or strangers owing only a local allegiance.

Such process must be served within the State to be binding on non-residents. Hakes v. Shupe, 27 Iowa, 465; McEwan v. Zimmer, 38 Mich., 765; Ewer v. Coffin, 1 Cush., 23.

2d. Voluntary appearance of the parties.

This makes the judgment rendered thereupon binding.

An appearance by an attorney at law will be presumed to have been authorized, but such presumption is rebuttable. Hill v. Mendenhall, 21 Wall., 453; Howard v. Smith, I. J. & Sp., 124.

The appearance must be a general one. Thus, where a defendant appeared for the purpose of moving to set aside a jusgment on the ground of want of jurisdiction, it was held to be not such an appearance as would make the judgment binding. Howard v. Smith, 35 Superior Ct., 131.

3d. Service in the manner prescribed by a local statute contrary to the forms of the common law. This is binding on residents of the State on account of the permanent allegiance they owe to their State. Douglas v. Forrest, 4 Bing., 686; Hunt v. Hunt, 72 N. Y., 217, 238; Huntley v. Baker, 33 Hun, 578; Henderson v. Stainford, 105 Mass., 504, 505; Harryman v. Roberts, 52 Md., 64.

Usual forms of such substituted service are by leaving the process at the residence of the defendant, service by publication, and personal service without the State.

4th. Substituted service on non-residents doing business within the State. This applies to service on resident agents of such non-resident principals, and proceeds on the theory of the implied designation of such agent to receive process. It has been authoritatively decided that this principle extends to foreign corporations and partnerships. Ins. Co. v. French, 18 How. (U. S.), 404; Gillespie v. Ins. Co., 12 Gray, 201; Gibbs v. Ins. Co., 63 N. Y., 114; Copin v. Adamson, L. R. 9 Ex., 114; Moulin v. Ins. Co., 54 N. J. L., 234.

Dicta indicate its extension to private individuals. Pennoyer v. Neff, 95 U. S., 714, 735.

5th. Substituted service on non-resident property holders. This is binding when the property is actually brought under the con-

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trol of the court by seizure or some equivalent act. This would be constructive notice. "The law assumes that the property is always in the possession of its owner in person or by agent."

Pennoyer v. Neff, 95 U. S., 714, 717.

Cooper v. Smith, 25 Iowa, 289, and cases cited; Abbott v. Sheppard, 44 Mo., 273.

This process of seizure is by attachment, foreign attachment, garnishment, factorizing and trustee process. Shese terms are synonymous, except that "garnishment" is confined to choses in action.

Judgments thereupon rendered are binding on the property seized, but are not binding *in personam*, and cannot be sued on in another State unless one or more of the circumstances exists which gives jurisdiction of the person as hereinbefore mentioned. Cooper v. Reynolds, 10 Wall., 308; Bissell v. Briggs, 9 Mass., 462, 468; Gray v. D. & H. Canal Co., 5 Abb. N. C., 131, 135; Eastman v. Wadleigh, 65 Me., 251; Moore v. R. R. Co., 43 Iowa, 385.

Attachment of the property of residents is a means of acquiring jurisdiction of the person under the principles stated in subdivision 3, and can be enforced in other States.

If the court attempts to gain jurisdiction in any mode not included under the foregoing subdivisions, the judgment, although binding in the State where rendered, is inoperative elsewhere. It is an encroachment on the jurisdiction of the other States, and is resisted by them as an unwarranted usurpation of authority. Therefore, a judgment founded on service of summons by publication is not bining on non-residents who did not appear and have not expressly or impliedly designated any one to receive service of process. St. Clair v. Cox, 106 U. S., 350.

Want of jurisdiction of the person is a matter of defence and must be proved by the defendant, otherwise it will be presumed that jurisdiction of the parties was properly acquired. Galpin v. Page, 10 Wall., 320; Bosworth v. Vandewalker, 53 N. Y., 597, 599; Wetherill v. Stillman, 65 Penn. St., 105; Phelps v. Duffy, 11 Nev., 80.

In all cases of substituted service the statute must have been strictly complied with. Bruce v. Cloutman, 45 N. H., 37. 38, and cases cited; Settlemier v. Sullivan, 97 U. S., 444.

It has been held in the Illinois courts that where the record stated that jurisdiction had been acquired over the person of the defendant, parol evidence was not admissible to contradict such statement. Zeff v. Hagner, 70 Ill., 223, and cases cited.

This doctrine is contrary to the better opinion, and it is not generally considered that a void judgment is valid simply because it declares itself to be so.

Khowles v. Gas Co., 19 Wall., 58; Hoffman v. Hoffman, 46 N. Y., 30; Napton v. Leaton, 71 Mo., 358; Easton v. Hasty, 6 Neb., 419; Rape v. Heaton, 9 Wis., 328; O'Rourke v. R. R. Co., 55 Iowa, 332.

3. Jurisdiction exceeded.

The third class of cases in which the judgment may be diregarded is where the court has jurisdiction of the subject and the parties, but has rendered a judgment in excess of such jurisdiction. Thus, where the New York Supreme Court assumed to declare a corporation dissolved at the suit of an individual stockholder, power to do which was not known to the common law nor conferred on the court by statute, the Supreme Judicial Court of Massachusetts declared such judgment void although the New York court had general power to regulate corporations and had acquired jurisdiction over the defendant. Folger v. Ins. Co., 39 Mass., 267.

4. Fraud.

There is some difference among the authorities as to whether a judgment of a sister State can be impeached for fraud. In many of the decisions, especially in New York, it is frequently stated that such judgments may be impeached for fraud.

The courts agree that if the jurisdiction was acquired by fraud then the judgment is inefficacious. Kerr v. Kerr, 41 N. Y., 272, 278; Davis v. Headley, 22 N. J. Eq., 115; Waddams v. Burnam, 1 Tyler (Vt.) 237. But this class of cases would be included among those where jurisdiction was not obtained.

Further than this many of the courts refuse to go, and they lay down the rule that, where jurisdiction has been obtained, the judgment is binding until set aside in the State where rendered. Christmas v. Russell, 5 Wall., 290; M'Rae v. Mattoon, 13 Pick., 53, 57; Anderson v. Anderson, 8 Ohio, 108.

There are cases which advance on this position and hold that where a judgment has been rendered by default, it may be shown in defence to an action thereon in another State that the defendant was pursuaded not to defend by false and fraudulent representations. Pearce v. Olney, 20 Conn., 544.

The rule which seems to prevail in New York is enunciated in Hunt v. Hunt, 72 N. Y., 217, 227, as follows:

"The fraud in such case is made up of the same constituents as is fraud in other cases, and the same state of facts must appear which is required in other instances."

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5. Erroneous decision of the law of another State.

To these grounds of impeachment Mr. Justice Story, in his "Conflict of Laws," sec. 607, adds another, to wit: "That on its face it is founded on mistake." As a general rule it would appear that this mistake, if one of law, was reviewable only on appeal because the courts of the deciding State should be the sole authority on their own laws; while as to the facts the decision in each case should be conclusive, and allowing them to be reviewed in another State would do away entirely with the rule that the judgment is conclusive as to the points decided.

There is, however, one class of cases where the mistakes of the deciding court will be corrected; that is where the court of one State decides the law of another State to be different from what it really is, and the judgment comes in question before a tribunal of the State whose law was erroneously passed upon. No judge or jury of any State or country can conclusively decide upon the law of any other State or country, so as to prevent the courts of the latter from applying its true principles to the case. Novelli v. Rossi, 2 B. & Ad., 757; Lang v. Holbrook, Crabbe, 179.

IV.—EFFECT OF THE JUDGMENT ON THE ORIGINAL CLAIM.

Here the rule is that if the judgment is valid no action can be brought on the claim on which it was based. This is in consonance with tne general principle of the law of contracts, that where the same obligation is evidenced by contracts of different grade, the one of lower grade is merged in the higher. Besley v. Palmer, 1 Hill, 482; Henderson v. Staniford, 105 Mass., 504; Harryman v. Roberts, 52 Md., 64; Clark v. Brown, 22 How. (U. S.), 270.

FOREIGN DIVORCES.

The marital relation is bipartite in character. It is a contract in its inception, and a status in its continuance. On account of its mixed nature there have been several theories as to the nature of a divorce dissolving it, as follows:

1. It has been considered as one of the incidents of the contract. From this view it would follow that a divorce could only be granted for a cause recognized by the law of the place where the marriage contract was made; and thus within the contemplation of the parties. This was the theory adopted by the English courts in the famous case of Rex v. Lolley, Russ & Ryan, 237. This case, although never directly overruled, has often been criticized.

2. Another theory is that a divorce is a remedy for a breach of the contract. From this view it would be granted in accordance with the *lex fori*.

This rule is the one generally followed throughout the country and has led to the great scandal which exists, of parties desirous of being freed from the marriage tie, bringing actions for divorce in States where the rules are less stringent than in their own, and thus making the law of their State inoperative. Kinnier v. Kinnier, 45 N. Y., 535.

The chief difficulty is the great diversity in the rules of the different States on the subject. In South Carolina divorces are not granted for any cause. In Rhode Island the discretion of the judge is the only restraint. Between the two there are all shades of variety.

3. People v. Baker, 76 N. Y., 78, indicates an advance toward firmer ground. The theory there suggested is, that divorces can only be decreed in exercise of the power which each State has to regulate the status of its own citizens. This makes the action a local instead of a transitory one. See also Barber v. Root, 10 Mass., 360.

The results of this rule would be as follows:

1. If both parties were residents of the State granting the divorce, it would be binding everywhere.

2. Where one party was a resident of the State granting the divorce, it would not be binding in other States as to the other party.

3. Where neither party is a resident of the State granting the divorce, although the parties submit to the jurisdiction of the court, the divorce would not be binding in other States, because no State has power to regulate the status of a citizen of another State, and so has no jurisdiction of the subject matter.

Even if this rule should become established, the parties might agree to change their domicile to a State less strict than their own. As has been said, the difficulty lies in the difference between the laws of the various States as to the causes for which divorces will be granted. Left to themselves the States can never agree upon any one rule. In 45 N. Y., 544, Church, C. J., says: "It is to be regretted that the marriage and divorce laws are not uniform in all the States, and we think they should conform to the laws of this State." Probably the judges of the other States are equally loyal to their own systems.—*Columbia Jurist.*

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U. S. Supreme Court Proceedings.

Nov. 18, 1885.

No. 69. Josiah Fisk v. The Police Jury of Jefferson, Left Bank, etc. No. 70. State of Louisiana, ex rel. Josiah Fisk v. Same. No. 71. State of Louisiana, ex rel. S. R. Stewart, v. Same. Submitted.

No. 729. Michael Hanley et al. v. Chas Donoghue. Argument commenced.

Nov. 19, 1885.

James M. Lewis, of St. Louis, Mo., was admitted to practice.

No. 229. Same. Argument concluded.

No. 875. D. M. Ferry & Co. v. Wm. Livingston, jr., collector, etc.

No. 876. Wm. Livingston, jr., collector, etc., v. D. M. Ferry & Co. Argued.

No. 887. Bernhard Arnson et al. v. Thomas Murphy, late collector. Argued.

Nov. 20, 1885.

Wm. C. Holgate, of Defiance, O., and George Hunt, of Springfield, Ill., were admitted to practice.

No. 992. Wm. S. Roberts v. Philip Reilly. Argued.

No. 1169. Angus W. Cannon v. the U. S. Argued.

Nov. 23, 1885.

James H. Holt, of Cleveland, O., and John H. Mahan, of Abiline, Kan., were admitted to practice

No. 44. Thomas Drew et al. v. Irving Grinnell et al., executors, etc.; judgment affirmed with costs. Opinion by Mr. Justice Blatchford.

No 59. P. A. Bohlen v. Richard Arthurs, assignee, etc., et al.; judgment affirmed with costs. Opinion by Mr. Justice Blatchford.

No. 871. J W. Moffit and T. W. Fields v. Stephen Kurtz; judgment affirmed with costs. Opinion by Mr. Justice Gray.

No. 860. Stephen Kurtz v. John Moffit and T. W. Fields; judgment reversed with costs and cause remanded for further proceedings to be had therein in conformity with the opinion of this court. Opinion by Mr. Justice Gray.

No. 16 William L. Gibson v. Edward Lyon et al.; judgment affirmed with costs. Opinion by Mr. Justice Matthews.

No. 50. Alexander R. Shepherd v. John Frederick May; judgment affirmed with costs and interest. Opinion by Mr. Justice Woods.

No. 46. John W. Traer et al. v. Henry Clews; decree affirmed with costs. Opinion by Mr. Justice Woods.

No. 42. Asahel Gage v. Maria B. Pumpelly et al., etc.; decree affirmed with costs. Opinion by Mr. Justice Harlan.

No. 593. The Missouri Pacific Railway Company v. Peter Humes; judgment affirmed with costs. Opinion by Mr. Justice Field.

No. 57 The Missouri Pacific Railway Company v. Vincent Terry; judgment affirmed with costs. Opinion by Mr. Justice Field.

No. 60. T. W. Thompson v. Allen County et al.; decree affirmed with costs. Opinion by Mr. Justice Miller, Mr. Justice Harlan dissenting.

No. 56. The St. Louis, Iron Mountain & Southern Railway Company v. Hugh McGee; decree affirmed with costs. Opinion by Mr. Chief Justice Waite.

No. 58. John Patch v. Elias E. White; judgment affirmed with costs by a divided court.

No. 63. H. G. C. Paulsen v. The Chesapeake & Ohio Railway Company; decree affirmed with costs. Announced by Mr. Chief Justice Waite.

No. 352. Gottfried Bachmann v. The Chesapeake & Ohio Railway Company; decree affirmed with costs. Announced by Mr. Chief Justice Waite.

No. 58. Mrs. Laura Ellen Jones, widow, etc., v. Watson Van Benthuysen; judgment affirmed with costs and interest. Opinion by Mr. Chief Justice Waite.

No. 1182. J. W. Leonard et al. v. W. H. Chatfield, trustee; No. 1183. J. W. Leonard et al. v. Ozark Land Company; modification of supersedeas. Opinion by Mr. Chief Justice Waite.

The Chief Justice announced the following order:

Ordered by the court that the Thirty-third rule of this court be amended so as to read as follows:

Thirty-third.—Models, diagrams and exhibits of material:

1. Models, diagrams and exhibits of material, forming part of the evidence taken in the court below, in any case pending in this court on writ of error or appeal, shall be placed in the custody of the marshal of this court, at least one month before the case is heard or submitted.

2. All models, diagrams and exhibits of materials placed in the custody of the marshal for the inspection of the court on the hearing of a case, must be taken away by the parties within one month after the case is decided. When this is not done, it shall be the duty of the marshal to notify the counsel in the case, by mail or otherwise, of the requirements of this rule; and if the articles are not removed within a reasonable time after the notice is given, he shall destroy them, or make such other disposition of them as to him may seem best.

No. 951. Harriett A. Burnett v. The United States; submitted under twentieth rule.

No 210. The United States v. Bem. Price; submitted under twentieth rule.

No. 1008. William S. Hassall, trustee, v. A. W. Wilcox et al.; motion to dismiss or affirm submitted.

No. 1169 Angus M. Cannon v. The United States; argument concluded.

No. 72. Wm. D. Marvel v. E. A. Merritt, late collector, etc.; submitted.

No. 78 Herman Presser v. The People of the State of Illinois; argument commenced.

Nov. 24, 1885.

Nelson L. Graffam, of Boston, Mass., and Henry Brodhead, of New York city, were admitted to practice.

No. 73. Herman Presser v. The People of the State of Illinois; argument concluded.

No. 74. George S. Pepper v. James Stinson; dismissed with costs per stipulation.

No. 75. W. C. Holgate et al. v. Rufus J. Eaton, administrator, etc.; argument commenced.

Nov. 25, 1885.

John Lowell, of Boston, Mass., and Albert C. Fowler and Charles A. Elliott, of Washington, D. C., were admitted to practice.

No. 75. W. C. Holgate et al. v. Rufus J. Eaton, administrator, etc.; argument concluded.

No. 76. John S. Anderson, executor, etc., v. The Township of Santa Anna; No. 77. John Confarr v. The Township of Santa Anna; argued.

No. 78. The United States v. John H. Mooney; argued.

Adjourned to November, 30.

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SUPREME COURT OF THE DISTRICT OF COLUMBIA
GENERAL TERM.

Nov. 23, 1885.

Green v. Norment and Green v. Ambler. On trial

Nov. 24, 1885.

U. S., ex rel. L. A. de la Rua, v. Thomas F. Bayard. Argued and submitted.

U. S., ex rel. Luther Harrison v. L. Q. C. Lamar. On argument.

Nov. 25, 1885

Same. Petition denied.

IN EQUITY.—New Suits.

Nov 21, 1885.

9716. Sarah Snowden v. H. Clay Johnson et al. To appoint new trustee. Com sol, Neal T. Murray.

Nov. 23, 1885.

9717. Anna M. Wardell v. David K. Wardell. For divorce. Com sol, W. F. Mattingly.

Nov. 24, 1885

9718. Wm. Cameron et al. v. John Mitchell et al. To annull tax deeds and for injunction. Com sols, McPherson & Carlisle.

Nov 25, 1885.

9719 James O. Vermillion v. Sarah E. Knight et al. Creditor's bill. Com sol, J. J. Darlington.

9720. Rebecca H. Hill et al. v. John C. Ten Eyck et al. To perfect title. Com sol, S R Bond.

CIRCUIT COURT.—New Suits at Law

Nov. 21, 1885

26505. S. Goldman & Cohn v. Frederick Sellinger. Notes, $543.50. Piffs attys, Carrington and Williamson.

26506. Glidden W. Joy v. Edward C Gill. Judgment of Justice Clark. $99 08.

26507. Same. Judgment of Justice Clark, $99.35.

26508. Louis A. Weinberg v. The Anglo-American Insurance Co. Policy, $800. Piffs attys, Earle and Darlington.

26509. Janetta Walkoviski v. Same. Policy, $2,700. Piffs attys, Same.

Nov. 23, 1885

26510. The Market National Bank of New York v. Wm. N. Dalton. Note, $475. Piffs atty, W. F. Mattingly.

Nov. 24, 1885.

26511. The U. S., ex rel. Harlow L. Street, v. Wm. C. Endicott. Mandamus. Piffs attys, Denver & Zachary.

26512. Barbour & Hamilton v. Charles E. Greer. Note, $115.26. Piffs atty, L. C. Williamson.

26513. Same v. John W. Lansdale. Note, $102 Piffs atty, Same.

26514. Same v. Jefferson D. Daily. Acct., $136 64. Piffs attys, Same.

26515. Ernest de Marolla v. Frederick P. Naehr. Acct., $138.81 Piffs attys, Birney & Birney.

26516. Cornelius W. Johnson v. Hugh B. Spedden. Acct., $247 50. Piffs atty, C. S. Bundy.

Nov. 25, 1885.

26517. W. B. McNeal v. The Penn. R. R. Co. et al. Damages. $15,000. Piffs attys, Blair and Lincoln.

26518. Potomac Terra Cotta Co. v. George P. Cannon et al. Acct., $716 73. Piffs atty, F. T. Browning.

Nov. 27, 1885.

26519. David Wolff v. Joseph Herzog, Replevin. Piffs atty, L. Tobriner,

26520. The B. & O. R. R. Co, v. The Ev'g Critic Pub. Co. Acct., $104.57, Piffs attys, Morris and Hamilton.

26521. Susan G. Carter v. Charles R. Plumbe. Acct. $130. Piffs atty, Mills Dean.

PROBATE COURT.—Justice Hagner.

Nov. 27, 1885.

Estate of Frances Blanchard. December 18, 1885, appointed for settlement.

Estate of Manuel J. Gonzales. Withdrawal of contest.

Estate of Jerry Coleman. Objection to will filed.

Estate of Maurice N Grossman. Final notice issued, returnable December 18, 1885.

Estate of Eleanor L. Jensen. Petition for probate of will filed.

Estate of John W. Elliott. Petition of Mary Elliot, widow, for probate of will and letters testamentary.

Estate of Rosa B. Snell. Petition of E E. Holman for letters of administration.

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WASHINGTON LAW REPORTER.

Washington, D. C.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 25th day of November, 1885.

WILLIAM CAMERON et al. v. JOHN MITCHELL et al. } In Equity. No. 9718. Doc. 25.

The object of this suit is to declare void and cancel six tax deeds from the District of Columbia to Mary H. Cameron, dated September 11, 1871, purporting to convey to her all of lot 26, in square 28, except the south 16½ feet; all of sub lots C. A M. E. R. O. N, in square 77; sub lot 5, in Davidson's Subdivision of lots 5 et al., in square 166; and parts of lots 1 and 2 in square north of square 551; all of said property being in Washington City, in the District of Columbia, and fully described in the bill; and to remove said cloud from the title of the complainants, who claim as devisees of Gilbert Cameron, deceased.

And, it appearing to the Court from the allegations of the bill, that the defendants, John Mitchell, James Mitchell and Margaret Mitchell Hughes, who are named as defendants therein, are not resident in this jurisdiction, but reside in Scotland, Great Britain, at or near Glasgow, and the subpœna in this cause having been returned "not to be found" as to said defendants, it is this 25th day of November, 1885, on motion of Messrs. McPherson & Carlisle, the solicitors for the complainants, ordered that the said defendants, John Mitchell, James Mitchell and Margaret Mitchell Hughes, cause their appearance to be entered herein on or before the first rule day occurring sixty days after this day: otherwise the cause will be proceeded with as in case of default. And that publication of this order be made once a week for six successive weeks in the New York Herald and the Washington Law Reporter.

A. B. HAGNER, Associate Justice.

True copy. Test: 48-6 R. J. MEIGS, Clerk.

By L. C. WILLIAMSON, Assistant Clerk.

MCPHERSON & CARLISLE, Solicitors, 507 D Street, N. W., Washington, D. C.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Louis Simon, late of Western Terrace, Nottingham, County of Nottingham, England, deceased,

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of November, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of November, 1885.

48 CHARLES E. FOSTER,

WM. G. HENDERSON, Solicitor. Administrator.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Joseph Steinberger, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of November, 1885.

45 TENIA STEINBERGER,

LEON TOBRINER, Solicitor. Administratrix.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

NELLIE F. PUMPHREY et al. v. ELIZABETH A. PUMPHREY et al. } 9410. Eq. Doc. 24

The trustees in the above-entitled cause, having reported that they have made sale of original lot 40, and lots 55 to 62, both inclusive, of their subdivision of original lots 41 and 42, in square No. 503, in the City of Washington, D. C., at prices aggregating $7,559.63, and upon the terms fixed by the decree of sale, and the said trustees having further reported an offer at private sale of $328.78, received by them for lot 1, in square south of square south of square 667, in said City, in accordance with said terms:

It is, by the Court, this 27th day of November, A. D. 1885, ordered, that the said sales made, be ratified and confirmed, and also that the said trustees be, and they hereby are authorized to accept said offer for lot 1, in square south of square south of square 667, at private sale, unless cause to the contrary hereof be shown on or before the 27th day of December, 1885.

Provided a copy of this order be published in the Washington Law Repopter once a week for three successive weeks before said last-mentioned date.

A. B. HAGNER.

A true copy. 48 Test: R. J. MEIGS, Clerk

THIS IS TO GIVE NOTICE,

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Wm Wallace Greenfield late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 22d day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of October, 1885

E EMMA GREENFIELD,

GORDON & GORDON, Solicitors. 48 Executrix.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business. November 27th, 1885.

In the case of Thomas J. Myers, Administrator of Frances Blanchard, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 18th day of December, A. D 1885, at 11 o'clock, a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 48 H. J. RAMSDELL, Register of Wills.

CARUSI & MILLER, Solicitors.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 25th day of November, 1885.

REBECCA H. HILL and THE CONNECTICUT GENERAL LIFE INSURANCE COMPANY, v. JOHN C. TEN EYCK, MARY TEN EYCK, JULIA TEN EYCK, JANIE SAUNDERS and JULIA HILLHOUSE. } No. 9720. Equity Docket, 25.

On motion of the plaintiffs, by Messrs Charles D Fowler and Samuel R. Bond, their solicitors, it is ordered that the defendants, John C, Ten Eyck, Mary Ten Eyck, Julia Ten Eyck, Janie Saunders and Julia Hillhouse, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A B, HAGNER, Justice.

A true copy. Test: 48 R J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 25th day of November, 1885.

SARAH SNOWDEN v. H. CLAY JOHNSON et al. } No. 9716. In Equity.

On motion of the plaintiffs, by Mr. Neal T. Murray, her solicitor, it is ordered that the defendants, A. Howard Johnson and Ella V. Hickman, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.

A true copy. 48 Test: R. J. MEIGS, Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

ANNA ELIZA BARNARD et al. v. WILLIAM RUSSELL WHITING et al. } 9537, Eq. Doc. 25.

Randolph Coyle the trustee in the above-entitled cause, having this day reported to the Court the sale by him on the twenty-first instant of the real estate involved in this cause, to John R. McLean, at and for the price of $22,000.00 to be paid in cash, upon the final ratification of the sale by the Court, without interest:

It is, by the Court, this 23d day of November, A. D. 1885, ordered that the sale so reported be, and the same hereby is, ratified and confirmed, unless cause to the contrary thereof be shown on or before the 23d day of December, A. D. 1885.

Provided, that a copy of this order be published in the Washington Law Reporter, once a week for three successive weeks before said last-mentioned date.

A. B. HAGNER.

A true copy. Test: 48 R. J MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. November 27th, 1885.

In the case of George W. Brown, Adm'r of Maurice N, Grossmann, deceased, the Adm'r aforesaid has, with the approval of the court, appointed Friday, the 18th day of December A. D. 1885, at 11 o'clock a. m, for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 48 H. J. RAMSDELL, Register of Wills.

HENRY WISE GARNETT, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, November 27th, 1885.

In the matter of the Estate of Cornelius Donovan, late of the District of Columbia, deceased

Application for Letters of Administration on the Estate of the said deceased has this day been made by Richard T. Donovan, who prays that said letters may be granted to Matthew G. Emery, jr

All persons interested are hereby notified to appear in this court on Friday, the 18th day of December next, at 11 o'clock a m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: 48 H. J. RAMSDELL, Register of Wills.

W. K. DU HAMEL, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 28th day of November, 1885.

EDMUND FITZGERALD v. MATILDA GRAHAM et al. } No. 9502. Eq. Doc. 25.

On motion of the plaintiff, by Messrs. Hine & Thomas, his solicitors, it is ordered that the defendant, Sarah Graham, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise this cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.

True copy. Test: 48 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administraijon on the personal estate of Wm. Pinkney Brooks, late of the District of Columbia, dec'd,

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of November, 1885.

48 WM. E. CLARK,

GORDON & GORDN, Solicitors. Administrator.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia. November 14, 1885.

JAMES A. THOMAS et al. v. ARTHUR F. THOMAS et al. } 9565. Eq. Doc. 25.

This cause coming on to be heard upon the report of the trustee filed herein on the 14th day of November, A. D. 1885, it is, this 14th day of November, A. D 1885, by the Court, ordered, adjudged and decreed, that the sale of the real estate mentioned in the bill filed herein to Mary Clarke, reported by the the trustee, Chapin Brown, in the report above-named, be and the same is hereby ratified and confirmed unless cause to the contrary be shown on or before the 14th day of December, A. D 1885.

Provided a copy of this order qe published once a week for three successive weeks in the Washington Law Reporter previous to said 14th day of December, A. D 1885.

A. B HAGNER.

A true copy. Test: 47 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscribers of the District of Columbia have obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Benedict Milburn, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscribers on or before the 13th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 13th day of November, 1885.

WM. G. HENDERSON,
WM. F. MATTINGLY,
47 Administrators.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of John Brent, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 16th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of November, 1885.

WILLIAM L. FREEMAN,
A. K. BROWNE, Solicitor 47 Executor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 21st day of November, 1885.

JOHN G LEE v. WILLIAM P. LEE et al. } No. 9659. Equity Docket, 25.

On motion of the plaintiff, by Mr. Chapin Brown, his solicitor, it is, this 21st day of November, A. D. 1885, ordered that the defendant, William P. Lee, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
True copy. Test: 47 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration d b n.c.t a. on the personal estate of Benjamin Alvord, late of the District of Columbia, decd.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber, on or before the 20th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of November, 1885.

47 BENJ ALVORD.
GEO. E. HAMILTON, Solicitor. Administrator d.b.n.c.t a

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Emily L. Alvord, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 20th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of November, 1885.

47 BENJ. ALVORD.
GEO. E. HAMILTON, Solicitor. Executor.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, this 9th day of November, 1885.

CALVIN NASH et al. v. ROBERT NASH et al. } 8928. Eq. Doc. 24.

Andrew A. Lipscomb, trustee in this cause, having reported the sale of all the real estate and premises described in these proceedings to James Fraser, esquire, for the sum of $2,214.98 cash; but by an error the order nisi heretofore issued, recites their sale to Charles Fraser: It is, this 9th day of November, A. D 1885, ordered by the court that the said sale to said James Fraser, as reported by said trustee, be ratified and confirmed unless cause to the contrary be shown on or before the 9th day of December, A D. 1885; provided a copy of this decree be published once a week for three successive weeks before that day in the Washington Law Reporter.

By the Court D. K. CARTTER, Ch. Justice.
A true copy Test: 46 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

MARY T. DAYTON v. CORNELIA H. DAYTON et al. } 7801 Eq. Doc. 21.

On consideration of the report of James M Johnston, trustee in said cause, filed the 30th day of September, 1885, it is, by the court, this ninth day of November, 1885. Ordered that the sale of original Lot numbered eleven (11) in Square numbered six hundred and thirty six (636) to John T Arms, esquire, at and for the sum of twenty four cents per square foot, payable in cash, be ratified and confirmed unless cause to the contrary be shown on or before the 9th day of December, 1885; and provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before the said day.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 46 R. J. MEIGS, Clerk

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 10th day of November, 1885.

THOMAS H. JONES v. CASSIE M. JONES. } No. 9651. Equity Doc. 25.

Application for divorce on the ground of cruelty, etc.

On motion of the plaintiff, by Mr. T. J. Mackey, his solicitor, it is ordered that the defendant, Cassie M Jones, cause her appearance to be entered herein on or before the first rule-day, occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. D. K. CARTTER, Ch. Justice.
A true copy. 46 Test: R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 11th day of November, 1885.

HENRY MASON v. REBECCA MASON. } No. 9668 Equity.

On motion of the plaintiff, by Mr Thomas F. Miller, his solicitor, it is ordered that the defendant, Rebecca Mason, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. D. K. CARTTER, Ch Justice.
True copy. Test: 46 R J MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 11th day of November, 1885.

AARON H FREAR v. JOHN INGLE CASH. } No. 9688. Equity.

On motion of the plaintiff, by Mr. Chas. A. Elliot, his solicitor, it is ordered that the defendant, John Ingle Cash, made defendant in a suit to quiet title to parts of original Lots Nos. 13 and 14 in Square No. 733, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day, otherwise the cause will be proceeded with as in case of default.

By the Court. D. K CARTTER, Ch. Justice.
A true copy Test: 46 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William Edelen, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 9th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of November, 1885.

WILLIAM SMALL, Adm'r.
46 Room 27 Pacific Building, Washington, D. C.

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Legal Notices.

IN THE SUHREME COURT OF THE DISTRICT OF Columbia, the 13th day of November, 1885.

MARY GANNON.
v.
WILLIE MCGUIRE, JOHN MCGUIRE and JONATHAN B. H. SMITH. } No. 9677. Equity.

On motion of the plaintiff, by Mr. John J. Johnson, her solicitor, it is ordered that the defendants, Willie McGuire, John McGuire and Jonathan B. H. Smith, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day, otherwise the cause will be proceeded with as in case of default.

By the Court: A. B. HAGNER, Justice, &c.
True copy. Test: 46 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. November 13th, 1885.

In the matter of the Estate of Barbara Koch, late of the District of Columbia, deceased

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by George C. Walker.

All persons interested are hereby notified to appear in this Court on Friday, the 4th day of December next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test 46 H. J. RAMSDELL, Register of Wills.
SIMON WOLF, Solicitor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Jane Campbell, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of November, 1885.
FRED. W. JONES.
46 Executor.

THIS IS TO GIVE NOTICE

That the subscribers, of the District of Columbia have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Levin M. Powell, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscribers, on or before the 6th day of November next; they may otherwise by law be excluded from all benefit of said estate.

Given under our hands this 6th day of November, 1885.
CHARLES D. DRAKE,
W. B. WEBB,
46 Executors.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Edward W. Tiers, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 30th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of October, 1885.
46 CLAIRE E. TIERS, Adm'x.
CHAS. PELHAM, 52 Corcoran Building, Solicitor.

THIS IS TO GIVE NOTICE

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business Letters of Administration on the personal estate of Rollins Thorne, late of Peru, South America, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 30th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of October, 1885.
45 JOHN F. ENNIS.
SHELLABARGER & WILSON, Solicitors. Administrator.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term in Equity.

MARY R. SQUIRES et al.
v.
JOHN F. GARNER et al. } 9551. Equity docket 26.

E. H. Thomas and Henry Wise Garnett, trustees in the above-entitled cause, having reported the sale of the property mentioned in these proceedings, being sub-lot thirty (30) in square four hundred (400), to W. P. H. Crews, for forty-six hundred dollars ($4,600.00), and that the purchaser has complied with terms of sale and offers to pay all the purchase-money in cash:

It is, this 17th day of November, A. D. 1885, ordered, that the said sale be, and the same hereby is, confirmed and ratified, and the purchaser have leave to pay all the purchase-money in cash, unless cause to the contrary be shown on or before the 17th day of December next.

Provided that a copy of this order be published in the Washington Law Reporter once a week for three (3) successive weeks prior to the said day last mentioned.

A. B. HAGNER.
True Copy. Test: 47 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE:

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John F. Hanna, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of November next: they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of November, 1885.
E. CECELIA HANNA,
JAS. M. JOHNSTON, Solicitor 47 Administratrix.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Ygnacio M. Zangroniz, late of Havana, Cuba, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of November, 1885.
B. F. LEIGHTON,
E. E. HOLMAN, Solicitor. 45 Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 17th day of October, 1885.

CHARLES F. CLAGETT
v.
FANNY E. CLAGETT. } No. 9462. Eq. Doc. 25.

Application for divorce on the charge of desertion.

On motion of the plaintiff, by Mr. M. J Ford, his solicitor, it is ordered that the defendant, Fanny E. Clagett, cause her appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
True copy. Test: 45 R. J MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

DAVID S. GITTINGS and others
v.
SILLIMAN BLAGDEN and another. } 9367. Ex. Doc 24.

The trustees in the above entitled cause having reported that they were unable to make sale at public auction of lots numbered eight, ten, (excepting therefrom about one-tenth of an acre), twelve, thirty, thirty-two, thirty three, thirty-four thirty-five, and thirty-six, of the tract of land known as "Argyle, Cowal and Lorn," in the County of Washington, in the District of Columbia, according to the subdivision thereof made by the Commissioners in Equity Cause No 4967, in this Court, of Blagden and others against Blagden and others; but that since their offer of said property at public auction, they have received from Arthur W. Machen, and have accepted, subject to ratification by this Court, a bid for said property of fifteen thousand dollars.

It is ordered by the Court, this 7th day of November, A. D 1885, that the sale of said lots of land to said Machen for $15,000, be ratified and confirmed, unless cause to the contrary be shown on or before the 5th day of December, A. D. 1885.

Provided a copy of this order be inserted in the Washington Law Reporter once a week for three successive weeks before the said 5th day of December, A. D. 1885.

A B HAGNER.
A true copy. Test: 45 R. J. MEIGS, Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business. November 13th, 1885

In the matter of the Last Will of Sarah J. Thompson, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters on the Estate of the said deceased, has this day been made by Elenor Thompson.

All persons interested are hereby notified to appear in this court on Friday, the 4th day of December next at 12 o'clock m., to show cause why the said Will should not be proved and admitted to Probate and Letters on the estate of said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B. HAGNER, Justice.
Test: 46 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court business, November 13, 1885.

In the matter of the Estate of Mary J. Wright, late of Berkeley Springs, State of West Virginia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by D. Pratt Wright and Philo B. Wright.

All persons interested are hereby notified to appear in this court on Friday the 4th day of December next at 12 o'clock, m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 46 H. J. RAMSDELL, Register of Wills.
E. A. NEWMAN, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Holding a Special Term for Orphans' Court Business. November 16th, 1885.

In the matter of the Estate of Guynilda H. Schley, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by her mother and sisters, to be issued to Charles L. Du Bois.

All persons interested are hereby notified to appear in this court on Friday, the 4th day of December next at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 46 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court business. November 13th, 1885.

In the case of William J. Miller, Administrator of Joseph L. Savage, deceased, the Administrator aforesaid has, with the approval of the Court appointed Friday, the 11th day of December A. D 1885, at 11 o'clock, a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 46 H. J. RAMSDELL, Register of Wills.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of John C. P. de Krafft, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of November, 1885.

ELIZABETH S. DE KRAFFT,
46 Administratrix c. t. a.

Legal Notices.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration on the personal estate of Rebecca H. Young, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of November, 1885.

45 HENRY HURT, Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. The 5th day of November, 1885.

SUSETTE MCNALLY
v.
THOMAS MCNALLY. } No. 9621.

On motion of the plaintiff, by Mr. Campbell Carrington, her solicitor, it is ordered that the defendant, Thomas McNally, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 45 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Thomas Clarkson Folger, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of October, 1884.

45 JAMES H. MANDEVILLE,
Executor of Thomas Clarkson Folger, deceased.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

SAMUEL A. PEUGH, Complainant,
v.
HENRY S. DAVIS, Defendant. } 1713. Eq Doc. 9.

Henry E Davis, the trustee in the above entitled cause, having reported to the court the sales by him on September 26th, 1885, of lots numbered from four (4) to ten (10), both inclusive, in square numbered nine hundred and ten (910), in the City of Washington, District of Columbia, at and for prices aggregating $8,642 60:

It is, this 6th day of November, A. D 1885, ordered, that the said sales so reported be, and the same hereby are, ratified and confirmed, unless cause to the contrary thereof be shown on or before the 6th day of December next;

Provided, that a copy of this order be published in the Washington Law Reporter once a Week for three (3) weeks prior to the said last mentioned day.

A. B. HAGNER.
A true copy. Test: 45 R. J MEIGS, clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

JOHN H. KING, Executor, &c.
v.
WILLIAM BROWN. } No. 9617. Equity.

Upon consideration of the report of Rutledge Willson, trustee, for the sale of the real estate involved in the above entitled cause, filed on the 6th day of November, A D. 1885:

It is, this 6th day of November, A D. 1885, ordered, that the sale therein reported be ratified and confirmed, unless cause to the contrary thereof be shown on or before the 7th day of December, A. D. 1885.

Provided, that a copy of this order be inserted in the Washington Law Reporter once a week for three successive weeks before the said day.

By the Court. A. B. HAGNER.
A true Copy Test: 45 R. J MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 29th day of October, 1885

ANNIE L. CAMP
v.
ELISHA CAMP. } No. 9665.

Application for divorce on the ground of desertion.

On motion of the plaintiff, by Mrs. Belva A. Lockwood, his solicitor, is it ordered that the defendant, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 44 R. J. MEIGS, Clerk.

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Washington Law Reporter

WASHINGTON - - - - - December 5, 1885.

GEORGE B. CORKHILL - - - EDITOR

IN Sawyer v. Campbell (Ill., 1885; 2 Northeastern Rep., 660), a point of practice which has often embarrassed attorneys in equity pleadings was passed upon to the effect that where a defendant against whom no relief is prayed, files a disclaimer of all right, title and interest in the subject matter of the action, it is not error to enter an order dismissing the bill as to him.

A DECISION of interest to ladies has been recently rendered by the court of last resort in Louisiana (Shea v. Reems, 36 La. An., 969), wherein it was held that wearing a sun-bonnet in the street is not necessarily an act of negligence. Mrs. Shea owned the bonnet that settled this question. Of the fabric, size and shape of this courted bonnet we know naught. The owner had it on her head and was crossing a street, when the projecting sides prevented her seeing a horse that was bearing down upon her, and she succumbed to the equine. The court gave her damages for the damage done to her.

A NOVEL suit has been been brought in Chicago by James R. McKay against the Equitable Life Assurance Society of the United States, in which he sets out that its Chicago agent sold him a tontine policy of $30,000 for fifteen years, on the representation that he could realize a surplus of $10,485. He paid $939 per annum for five years, when the company informed him last August that it would not able to carry out its representations. He claims his policy was written up on misrepresentations, and sues to recover the amount of premiums paid.

THERE is something of the shrewd humor of the Oriental cadi in the decision of a Russian stipendiary magistrate, a report of which has just reached us from Odessa. It appears that a new cemetery is about to be opened near that city, and that two Greek merchants, each anxious to secure the most comfortable or most distinguished resting place, were allowed, by some official blunder, to buy the same allotment. When the mistake was discovered neither would yield his claim, and the matter was referred to the district judge. Greek had met Greek, and the tug of war threatened to be severe, when the magistrate, with an astuteness worthyy of Solomon, arranged the matter in the simplest way possible by applying the rule "First come, first served," and suggesting that whichever died first should have the right to the coveted resting place. The parties went away reconciled and happy. It is not stated whether they had to find sureties to guarantee that neither would take an unfair advantage of the other by committing suicide.

IN Inhabitants of Leominster v. Conant (Mass., 1885; 2 Northeastern Rep., 690), the Supreme Court of Massachusetts lay down the somewhat general principle that the authority to keep a record carries with it the right to amend it, and apply this to sustain an alteration (made by the authority of the selectmen when still in office, and having the custody of the records although seven months had passed), in the entry stating their action at an official meeting.

IN Summers v. Board of Commissioners of Daviess Co. (Ind., 1885; 2 Northeastern Rep., 725), the county was held not liable for injury caused by the unskillness of the physician employed by the county commissioners to treat the poor, especially as it did not appear that the commissioners were negligent in selecting such physician.

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Supreme Court District of Columbia

GENERAL TERM.

JOHN P. JACKSON
vs.
HENRY E. DAVIS, Administrator.
EQUITY. No. 7,990.
(*Concluded from last issue.*)

The Supreme Court of the United States, in 110 U. S., the case of The United States against Ryder, where the claim was made of the subrogation of the bail in a criminal case to the right of priority, deny the right of subrogation of the bail on account of public policy. But while they deny that, they review the doctrine of subrogation at common law and especially refer to the recognized doctrine of subrogation to the right of prerogative of the Crown of England. So it has been applied from the time of Magna Charta in favor of sureties and also in favor of one surety against his co-surety, so as to vindicate the justice of the particular case in all instances irrespective of the sources from which the right to priority has flowed to the principal creditor.

I read a passage from page 733 of the opinion of the court delivered by Mr. Justice Bradley. After discussing the case of Dering *vs.* The Earl of Winchester, to be found in 1st White & Tudor's L. C. in Equity, 100, he goes onto say:

"The doctrine is that a surety paying the debt for which he is bound is not only entitled to all the rights and remedies of the creditor against the principal for the whole amount, but against the other sureties for their proportional part. This is clearly the rule where the principal obligation is the payment of money or the performance of a civil duty. And in England the sureties of a debtor to the king (as for duties, taxes, excise, etc.), have always, since *magna charta*, at least, had the right, upon paying the debt, to have the benefit of prerogative process, such as extent or other crown process adapted to the case, to aid them in coercing payment from the principal and compelling contributions from co-sureties."

So that it is quite apparent that the doctrine of prerogative out of which the doctrine of priority arises, is no qualification of the right of a co-surety to be placed in the exact position with all the rights and exclusiveness of the principal creditor as against the party for whom he has paid his money.

One other remark. It was suggested that if such a doctrine were allowed, it would tend to impede the facility, and diminish the chances, of obtaining sureties on official bonds. The Court of Appeals of Maryland, in this case to which I have referred, mention that subject too, and takes just the opposite view, as I shall, of that matter. At the close of the opinion to which I have referred, they say, at the bottom of page 46:

"While this view of the law will do no wrong to any one, it will add facilities in securing and collecting the revenue of the State. If sureties know that they can be subrogated to the priority of the State, less apprehension will be felt in joining in the bonds of collectors, and less delay in payment of solvent securities, other creditors are not injured, for if the State has the first claim upon the funds, it does them no wrong whether this claim is enforced by the State or by those standing in its stead."

This brief review of these authorities and a multitude of others to which I could have referred, show that every objection which has been urged is without foundation in the present case, and the party complainant is entitled to the right which he claims at the hands of a court of equity to be substituted, and to be paid the contributory share of his co-security out of the assets of the decedent, to the exclusion of all his other creditors, and it will be so ordered.

Mr. Justice JAMES, dissenting:

I dissent from the opinion of the majority of the court with reluctance, and only because I believe that this court simply has no power to deal with a priority given by statute to the United States as we might deal with the priority of a private party, and to subrogate a surety as against a co-surety to that priority, in the absence of any statute authorizing us to take possession of and apply that government remedy for the collection of a debt to the public. So far from justifying the exercise of such a jurisdiction, the judgment and the reasoning of the Supreme Court in Lidderdale's Ex'rs *vs.* Robinson's

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Ex'rs, 12 Wheat., 594, seems to me to forbid it.

The principle on which the power of a court of equity to subrogate sureties to the securities and remedies of the creditor stands, is that the creditor, when paid by the surety, is under an equitable obligation to turn over to the surety such securities and remedies, and that this obligation can be enforced. In Lidderdale's Ex'rs *vs* Robinson, the plaintiffs' testator had, as a joint endorser with the defendant of a bill of exchange, paid more than his share ofthe debt. Mr. Justice Johnson, in stating the case, said: "There is no question on his right to come in for that sum as a simple contract creditor; but he claims precedence, and the rank of a judgment creditor, under a particular provision of the laws of Virginia, and under an equitable principle, according to which he who pays a debt of a superior dignity is supposed to rank, in the application of assets, according to the dignity of the debt satisfied; or, in other words, is substituted for the creditor who held the prior debt." The law of Virginia referred to placed protested bills of exchange, after the death of the drawer or indorser, on a level with judgments and these had priority. The court stated the principle as follows: "That a surety who discharges the debt of the principal shall, in general, succeed to the rights of the creditor, as well direct as incidental, is strongly exemplified in those cases in which the surety is permitted to succeed to those rights, even against bail, who are them selves, in many respects, regarded as sureties. 2 Vern., 608; 11 Ves., 22. That such would be the effect of an actual assignment made by the creditor to the surety, or to some third person for his benefit, no one can doubt. But in the cases last cited we find the court of equity lending its aid to compel the creditor to assign the cause of action, and thus to make an actual substitution of the sureties, so as to perfect their claim at law. This fully affirms the right to succeed to the legal standing of their principal; and, after establishing that principle, it is going but one step further to consider that as done which the surety has a right to have done in his favor, and thus to sustain the substitution without an actual assignment . . . . If the parties in this cause be considered as claiming under assignment from the holder of the bill, and each as assignee of the claim against his co-indorsee, according to the actual state of their respective interests, there can be no doubt of the priority here claimed." The remainder of the opinion is merely a demonstration that the court may enforce the obligation without an *actual* assignment, and as if it had been made. The chief justice, in deciding the same case in the circuit court, had said: "Where there is a principal and surety, and the surety pays off the debt, he is entitled to have an assignment of the security." The right of the surety was rested on the same principle in England. In *Ex parte* Crisp, 1 Atk., 133, Lord Hardwicke said, that where the surety paid off the debt he was entitled to have from the creditor "an assignment of the security, to enable him to obtain satisfaction for what he had paid beyond his proportion;" and in Morgan *vs.* Seymour, 1 Ch. Rep., 64, the court decreed that the creditor should assign his bond to the two sureties, to the same end. It is true that, since the decision of Copis *vs.* Middleton, it is held by the English chancery courts, though not in this country, that, in the case of a bond or other instrument for the debt, payment by the surety extinguishes the instrument, so that it cannot be so assigned; but that case only confirms the doctrine that the substitution of the surety stands upon the principle which I have indicated, and that he cannot be substituted where the court has on power to compel an assignment. See, further, Hodgson *vs.* Shaw, 3 Mylne & Keene, 191; Clasan *vs.* Morris, 10 Johns., 524; Cuyler *vs.* Ensworth, 6 Paige, 32; Eno *vs.* Crooke, 10 N. Y., 66; Burge on Sur., 355; Sheldon on Subrog., sec. 87.

Now the modern practice, by which the surety is allowed to avail himself of the creditor's securities and remedies, without an assignment and without making the creditor a party, has not, of course, affected the principle upon which the powers of the courts of equity rest, nor enlarged the jurisdiction of those courts. That jurisdiction still depends upon the power which

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equity has to compel the performance of the creditor's obligation to turn over to the surety, who has paid the debt, any securities and remedies which he himself had acquired for the collection of that debt from the principal or another surety. If this is the basis, and therefore the measure, of the power of equity, in the matter of substitution, it follows that no court of equity in this country, either of the United States or any one of the States, has jurisdiction or power to substitute a surety to the priority of the United States, except just so far as the United States have by statute consented that they may do so. It may be that, where the United States have taken from the principal or one of the sureties a mortgage or other similar contract security, the government may be treated as a party to an ordinary contract, and such consent may be implied; but I do not perceive how any such consent can be implied in the case of a security in the form of a remedy provided by a public statute; especially in the face of a statute which contains an express and limited consent to a subrogation to such remedy. The judicicial power conferred by the Constitution is power *in invitum*, and is not power over the United States, any more than the judicial power of the English courts, theoretically derived from the king, is *power* over the king. When such power is apparently exercised by those courts, it is always by the king's consent, and not as power. I do not mean, by this comparison, to imply that he superiority of the United States to the control *in invitum* of their own judicial power, rests upon any such analogy. It arises from construction of the Constitution which establishes and defines that power. In accordance with this principle, Congress has always been careful to provide by statute the extent to which private parties may avail themselves of its securities, and in accordance with this principle they cannot do so in any case to which the United States are not shown to have consented.

The practice of the Exchequer Court in allowing the sureties of crown debtors to use the crown process against their principals and co-sureties, has been referred to as if it were an example of the power of equity to do the same thing. The true character of the proceedings in such cases is shown in Regina *vs.* Salter, 1 Hurlst. & Norm., 274, and by the cases cited in the note to The King *vs.* Bennett, 1 Wightwick, 1. In Regina *vs.* Salter, the application on behalf of the sureties was for an order that they should be placed in the situation of the crown, and that the writ of extent, which had issued against the defendant (the principal on the bond), should be put in force in their behalf, until they should be reimbursed what they had paid. The order was *nisi*, and was afterwards made absolute, "counsel appearing on the part of the crown, and consenting." And this was the course taken in all cases. See Regina *vs.* Robinson, in a note to the case last cited. These cases involved the exercise of the peculiar powers of the Exchequer Court, and that court does not appear even to have been governed by the equity doctrine which has been appealed to; for, in a note to The King *vs.* Bennett, Wightw., p. 6, the reporter states that he had found on the order book of 1702 a case in which *a stranger*, who had offered to pay the crown's debt for the credit of the debtor, was allowed to have the crown's prerogative process. Clearly there is nothing in the practice of the Exchequer which tends to show that a court of equity has power to take possession of the remedies of the United States on behalf of a surety as against a co-surety.

Now Congress, so far from consenting that the priority established for the United States should be controlled by the courts of equity so far as to apply it as between co-sureties, seems designedly to have excluded that particular case, while providing for such control and application as between the surety and his principal. Four statutes on the subject of priority were enacted in nine years, and the system was perfected only step by step, and from all of these laws the case of co-sureties was excluded. The act of August 4, 1790 (1 Stat., 169) provided only for the priority of the United States, and against the estates of debtors on customs bonds; making no provisions for sureties. Two years later, by the act of May 2, 1792, sec. 18 (1 Stat, 263), it was provided that sureties on such bonds should have, against the estates of

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their principals, the same priority which had been given by the earlier act to the United States. Five years afterwards, by the act of March 3, 1797 (1 Stat., 515), the priority of the United States was extended to the estates of all debtors, but nothing was said in that act about sureties, and their priority remained as limited by the act of 1792. Finally, the priority of the United States was further regulated, and priority was extended to sureties on other than customs bonds, by the act of March 2, 1799, sec. 65 (1 Stat., 676). In this extension of the right to a new class of sureties, the affirmative statement of the right was limited to priority against the estates of the princtpals on the bonds.

This condition of the statute law has been undisturbed for eighty-six years. Was it uot intended to be the whole of the law on that subject? The authors of this legislation were not unacquainted with the doctrine of subrogation to the rights of creditors, as applied by courts of equity between co-sureties on bonds between private persons; and in providing for sureties, could not fail to consider that matter at some one of the various steps in perfecting their legislation on the subject of priority. I conceive that the legitimate conclusion to be drawn from the number of these steps, and from the final form of its action is, that Congress intended by this legislation to dispose of the whole subject of priority, so far as parties to public bonds were concerned, and to determine by it precisely how far subrogation should be applied by the courts to the government's right of priority. From their own application of that doctrine, thus intended to be discriminating and final, subrogation to this government remedy, *as between co-sureties*, seems to have been designedly excluded. Even if it were true that the ordinary jurisdiction of equity would, without an authorizing statute, have included such control over such a remedy, this designed omission in a statute, manifestly dealing with the whole subject of priority, would amount to an exclusion of the power of equity to apply its ordinary rule to the omitted case. I do not mean, of course, that the courts of equity were thus deprived of power to enforce *contribution* among co-sureties, because a suit for that purpose is not mentioned in the statute. I confine the argument to the particular question of the control of equity over the peculiar remedy of priority given to the government.

The principle of intended exclusion, to which I refer, has been applied so as to work even the repeal of a statute. In Murdock *vs.* The City of Memphis, 20 Wallace, 617, the Supreme Court considered the question whether the act of February 5, 1867, 14 Stat., 385, had the effect to repeal the 25th section of the Judiciary Act, when Mr. Justice Miller said: "A careful comparison of these two sections can leave no doubt that it was the intention of Congress, by the latter statute, to revise the entire matter to which they both had reference, to make such changes in the law as it stood as they thought best, and to substitute their will in that regard entirely for the old law upon the subject. We are of opinion that it was their intention to make a new law so far as the present law differed from the former, and that the new law, embracing all that was intended to be preserved of the old, omitting what was not so intended, became complete in itself and repealed all other law on the subject embraced within it." United States *vs.* Tynen, 11 Wall., 88; Henderson Tobacco, *Ib.*, 652; Bartlett *vs.* King, 12 Mass., 537; Cincinnati *vs.* Cody, 10 Pick., 36. *A fortiori* must a similar exclusion of a mere rule of equity from what was intended to be a complete provision of subrogation to priority, have the effect to do away, if it had ever existed, the power here asserted. We must, in such a case, suppose that the statute took that limited form because it was expected and intended to accomplish the whole policy of the Government. And how it should be a question of mere policy is perfectly intelligible. In the first place, priority was given to the Government itself because it was necessary that the Government should be secure of its revenues. In the next place, and to the same end, it was important to obtain sureties on the bonds of its debtors, and, in furtherance of this policy, it was deemed advisable, and at the same time sufficient, to offer

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to those sureties the same remedies against *their principals* which the government itself had. It is on the very face of this line of statutes that the legislature assumed that these priorities were a matter purely of administrative policy, and that such only should be allowed as it was necessary to allow in the interest of the Government. In estimating the effect of this legislation it should be further observed that the strictness with which the priority of the Government itself has been treated by the Supreme Court, suggests that the whole matter stands upon the affirmative provisione of the statute, and that, beyond these, no priorities exist.

I am of opinion, then, that this court has not the power, as a matter of ordinary equitable jurisdiction, to control and apply to the use of a private party a priority given to the United States, except to the extent to which the legislature has expressly given consent, and that power to do so as between co-sureties is not within the consent actually given. And I conceive that, if such power might have belonged to the courts of equity without an affirmative grant or express consent, the intention of the legislature to exclude and forbid its exercise is apparent in the statutes to which I have referred.

I am aware that I give the more weight to the objections which have been stated, because I hold that priorities against the other creditors of an estate do not stand upon any equitable ground, and are justifiable only on grounds of overruling policy or necessity. Equal distribution of an insolvent estate is the rule which commends itself to equity, a rule which is not to be forgotten by a court of equity when it is called upon to determine what, upon consideration of *all* the rights to be affected, it is equitable to do in such a matter as that before us. I do not conceive that we are called upon to apply the rule of substitution, on grounds of pure equity, to a special remedy given to the Government, with the effect of thereby ignoring the other creditors of the insolvent estate. And to my mind the suggestion that these other creditors have nothing to complain of, because they would have suffered just as much if the Government had enforced this priority for its own behoof, is of no force. I do not perceive how it follows from the fact that the United States had been given a legal right to such a priority, because it was indispensable that the Government should have its revenues, that therefore it was equitable that the general creditors should suffer to the same extent at the hands of a private party, in whose behalf no such necessity is recognized.

United States Supreme Court.

No. 25 —OCTOBER TERM, 1885.

MARTIN F. MORRIS, EXECUTOR OF RICHARD T. Merrick, deceased, and Mary H. Durant, Executrix of Thomas J. Durant, deceased, Plaintiffs in Error,

vs.

DEWITT C. GIDDINGS.

In Error to the Supreme Court of the District of Columbia.

Mr. Justice HARLAN delivered the opinion of the court.

This action was brought by Richard T. Merrick and Thomas J. Durant to recover damages sustained by them in consequence of the violation of an agreement alleged to have been made by the defendant in error, in reference to compensation due them for certain legal services rendered in behalf of the State of Texas. The declaration contains a special count, and also a common count for money had and received to the use of the plaintiffs. The answer put in issue the existence of the alleged agreement, and every material fact averred in the declaration. Although the record contains several bills of exceptions upon plaintiffs' offer to introduce evidence, the decisive question is, whether the court erred in peremptorily instructing the jury, upon the whole case, to find for the defendant. 1 Mackey, 394.

After the present writ of error was sued out, each of the plaintiffs died, and the action has been revived in the name of their respective personal representatives.

The instruction to find a verdict for the defendant must be tested by the same rules that apply in the case of a demurrer to evidence. Park v. Ross, 11 How., 373; Richardson v. City of Boston, 19 Ib., 268; Schuerdt v. Allens, 1 Wall., 370. If, therefore, the facts established, and the conclusions which they reasonably justify, do not disclose a valid cause of action against the defendant, the

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judgment must be affirmed; otherwise, reversed.

The bill of exceptions states that there was evidence tending to make the following case:

In the year 1867, Mr. Merrick, in conjunction with other counsel, was employed by the State to conduct, and they did conduct, legal proceedings for the recovery of certain bonds and coupons, of which, at the commencement of the recent civil war, she was the holder and owner, but which, pending that conflict, were transferred by a military board of the insurrectionary government of Texas for the purpose of enabling it carry on war against the United States. These bonds had been received by the State from the United States under and in pursuance of the act of Congress, approved September 9, 1850, entitled, "An act proposing to the State of Texas the establishment of her northern and western boundaries, the relinquishment by the said State of all territory claimed by her exterior to said boundaries, and of all her claims upon the United States, and to establish a territorial government for New Mexico." 9 Stat., ch. 49, p. 446. At the time of the employment of Mr. Merrick, some of the bonds and coupons, so transferred, were held, in this country, by the firm of White & Chiles, while the residue had been sent to England, and were there held, for others, by Droege & Co. and the Manchester Bank.

The suit instituted was by original bill filed in this court in the name of the State against the firm of White & Chiles and others. By the final decree therein it was adjudged that the State was entitled to recover the bonds and coupons of which White & Chiles claimed to have become owners under a contract made between them and said military board on January 12, 1865. Texas v. White, 7 Wall., 741-2. Subsequently, in 1873, the governor of Texas employed Mr. Merrick and Mr. Durant to institute, and accordingly they did institute, suit in the Court of Claims for the recovery of the proceeds of such of the bonds and coupons as had been sent to England; their compensation to be twenty per centum of what might be recovered by means of that suit. It does not appear what, if anything, was realized by that proceeding.

After the decree in this court in Texas v. White, &c., establishing the invalidity, as to the lawful government of Texas, of the transfer made to White & Chiles, title was asserted by Chiles, individually, to the bonds and coupons, or their proceeds, held in England. Of this new claim, based upon a contract which Chiles pretended was made with him alone by said military board, Droege & Co. and the Manchester Bank were formally notified; and such claim and notice constituted the sole impediment in the way of the prompt recognition by that firm and bank of the State's right to receive the bonds and coupons, or their proceeds, so held by them.

In this condition of affairs, the State, on the 2d of June, 1874, entered into a written agreement with J. D. Giddings and the defendant, whereby they were constituted agents, to proceed by suit against all persons having claims, adverse to Texas, to all or any part of the bonds transferred by said military board, with authority to compromise those claims upon such terms as the governor of the State should approve. And it was stipulated that the agents should have, for their services, a contingent fee of ten per cent. for all sums actually received, under their appointment, by compromise, and twenty per cent. on all sums recovered and actually realized by suit, and no more; such "per cents, respectively, to cover all costs and expenses and attorney's fees, whether accrued heretofore or to be incurred hereafter, so as to give the State of Texas all of the money so to be obtained, save and except the ten per cent. aforesaid," The selection of J. D. Giddings and D. C. Giddings as agents of the State was not designed to interfere with the counsel previously employed; for, shortly after their appointment, the governor of Texas informed the latter that such agents were to be only their "outside aids" in conducting the litigation.

On the 13th of October 1874, in consequence of objections made by defendant to the terms of the contract of June 2, 1874, the governor agreed to its modification, as indicated by his endorsement, as follows:

"Whereas apprehensions have been expressed by J. D. and D. C. Giddings that, in consequence of outstanding contracts heretofore made with other attorneys, under which contingent fees are claimed, that if said claims are sustained the said Giddings might become liable to the State for any excess thereof above ten or twenty per cent. stipulated in the within contract; this endorsement is made for the purpose of declaring that no such liability by the said Giddings in said event was intended or contemplated; and as, under outstanding contracts as aforesaid, the per cent. for fees may equal or exceed that stipulated for that purpose in this contract, it is hereby declared that said Giddings shall be paid, in that event, a reasonable per cent. of the amount realized by them on compromise, which shall be a just compensation for their services."

Subsequently, in November and December,

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1874, Merrick and Durant were employed by the State to institute and conduct further proceedings to remove and avoid the new title and pretension set up by Chiles to the bonds and coupons, or their proceeds, held in England. It was agreed that if, by means of those proceedings, the State recovered the bonds and coupons, or their proceeds, the attorneys should receive for their compensation twenty per centum of what was so obtained. Under such employment, they commenced proceedings in this court which resulted in a judgment rendered March 29, 1875, to the effect that Chiles, in making claim to the bonds and coupons, and their proceeds, in England, was in contempt of this court, for which he should pay a fine to the United States of $250, and stand committed until it was paid. In re Chiles. 22 Wall., 165. Of these proceedings the defendant was informed by Merrick and Durant; indeed, defendant urged upon the attorneys the necessity of such a suit, in order that his trip to England be attended with success. He was furnished by the attorneys with a certified copy of all the proceeding in this court. The defendant, with knowledge of the State's contract with the attorneys, and also that the latter claimed twenty per cent. of what might be collected in England, went abroad in July, 1875, and, prior to September 29th of that year, succeeded in recovering of such bonds and coupons, and their proceeds, an amount equivalent to $339,-240 in the currency of the United States. This collection was effected solely in consequence of the last mentioned proceedings in this court. Prior to his departure for Europe, as well as after his return to this country, the defendant promised the attorneys that he would hold any fund collected until their fees should be paid, and he informed them that the governor of Texas had given him the assurance that all fees might be paid from that fund before its surrender to the State. The last occasion upon which that promise was made and information given was on the 30th of September, 1875, during an interview with Mr. Durant, while defendant was in Washington for the purpose of obtaining payment of the bonds and coupons recovered in Europe. The defendant left Washington the same day, and shortly thereafter, under the requirement of the governor of the Texas, paid to the latter, of the funds so collected, the sum of $300,000. Of this fact the attorneys were informed by defendant on the 23d day of October, 1875. They were at the same time notified that, out of the balance, $39,240, in his hands, the governor of Texas had allowed to J. D. and D. C. Gidnings the sum of $31.240, leaving for the attorneys only the sum of $8.000. which latter amount the governor of Texas agreed should be held until they could be heard from. Finally, on December 17, 1875, the $8.000 was paid by defendant to the governor of Texas. After December 30, 1875, and prior to January 12, 1876, the attorneys were notified by the governor of Texas that, "unless they would accept said sum of $8 000 under a receipt in full for all services by them rendered to the State in respect to said bonds and coupons, &c., he would pay that sum into the treasury of the State and leave the legislature to settle the matter."

On the 12th of January, 1876, Merrick and Durant—without knowledge of the existence of the contract of June 2, 1874, or of its modificationon on the 12th of October. 1874, or of the fact that defendant held the $8.000 on 21st of October, and retained it until December 17, 1875—addressed a letter to the governor of Texas, in which, although protesting against the injustice done them by limiting the amount of their compensation to $8,000, they enclosed a receipt for that sum, "acknowledging the same to be in full for all demads against the said State, in and about the recovery of the said bonds and coupons or their proceeds." The bill of exceptions sets forth that had they been informed of the facts of which, as just stated, they had no knowledge, they would not have executed that receipt, or received the said $8,000 upon it.

Other facts are set out in the bills of exceptions, but as they do not materially affect the conclusion to be necessarily reached from those recited, they need not be stated.

It must be conceded that the claim of Merrick and Durant to be entitled, under their contract, to receive for their services an amount equal to twenty per cent. of the bonds and coupons, and their proceeds, recovered by the defendant in England, finds strong support in the facts which the evidence, as we are informed by the bill of exceptions, tended to establish; for, not only does that recovery seem to have been the immediate result of the legal proceedings instituted and conducted by the attorneys, but the evidence justifies the conclusion that it was in the minds of all the parties, including the governor of Texas and the defendant, that the attorneys should be deemed to have participated in any collections made in England, provided it appeared that those collections were the result of the suit last instituted in this court.

In this view of the evidence, and under all

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the circumstances of the case, it may be that the promise by the defendant not to part with the bonds and coupons or their proceeds, which might be recovered in England, until the fees of the attorneys were settled, was not inconsistent with the relations which he and they respectively held to the State. And it may, also, be that, for the violation of that promise, the defendant was responsible to them in damages. But, in our opinion, the attitude of the parties toward each other, and the whole aspect of the case, was changed when the attorneys, with information as to the amount collected by defendant, and with knowledge that their claim of twenty per cent. of such collections was controverted, came to a final settlement with the State upon the basis of $8,000 as full compensation for all services rendered in and about the recovery of the bonds and coupons, or their proceeds. That settlement, we are constrained to hold, swept away the very foundation of their demand against the defendant; for, in establishing that demand, it was necessary to show that the State was actually indebted to them for legal services rendered. But how could such indebtedness be shown to exist, and how could the attorneys be said to have been damaged, within the meaning of the law, when, prior to any suit against defendant for violation of his agreement, the attorneys voluntarily submitted a compromise, by which, in consideration of a named sum, they released the State from all further liability to them? Their suit proceeds upon the distinct ground that defendant's failure to keep his promise deprived them of the opportunity to obtain such amount as the State owed them for their services. But that breach by defendant of his promise could not be made the basis of an action for damages, after they stipulated with the State to receive, and did receive, a specified sum in full discharge of all claims for legal services in respect of the bonds and coupons, or their proceeds. And this view of the rights of the parties is not at all affected by the fact that the attorneys were, at the time of their settlement with the State, ignorant of the contract of June 2, 1874, or of its subsequent modification. To that contract they were not parties, and it was entirely competent for the State and her agents to modify it without notice to or consultation with others. The attorneys had their separate contract with the State, made at the time of their employment, under which they proceeded against Chiles in respect of his individual claim to the securities, or their proceeds, held in England. The defendant was not bound by his relations with them to disclose the terms of the contract which he and his partner had with the State. The attorneys were in possession of all the facts essential to their determination of the question whether they would stand upon their own contract or accede to the proposition made by the governor to pay them, in full of all demands, a specified sum. With information as to the amount actually recovered for the State, and as to the amount claimed by, and allowed to, the defendant and his partner for their services, the attorneys made a final settlement with her upon the basis already indicated. That settlement, we repeat, precluded them from making any further claim upon the fund which came to the hands of the defendant as agent of the State, and, consequently, precludes them from recovering damages by reason of the defendant having surrendered that fund in advance of the payment of their fees, retaining only what was allowed to him and his partner for their services.

Touching the suggestion that the defendant and his partner were not justly or equitably entitled to receive more than the attorneys who conducted the litigation, it is sufficient to say that the former did not receive more than the State agreed to pay them, while the attorneys have received what they agreed to accept in full discharge of their claim against the State.

For these reasons, and without reference to other considerations pressed upon our attention, it was proper to instruct the jury to find for the defendant.

Judgment affirmed.

THE case of Innerarity v. Merchants' Nat. Bank (Mass., 1885; 1 Northeastern Rep., 282) is one of some importance on the question of whether notice to the director of a bank is notice to the bank.

The court held that in this case it was not, because the director was a wrongdoer in the transaction, and that it could not be presumed that he would communicate the fact thereof to his corporation, thus recognizing an exception to the general rule already made by a number of cases.

MAGISTRATE. — The serious charge of chicken stealing is preferred against you, Uncle Rastus.

Uncle Rastus.—Do de indictment say chicken stealin', yo' honah?

Magistrate.—Yes.

Uncle Rastus.—Den de indictment am defecktive, yo' honah. It war a turkey I stole. I demands a habeous corpeus and takes advantage ob de technumcalities ob de law.

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IN THE case of George Crawford, respondent, v. The West Side Bank, appellant, the Court of Appeals of New York decides that changing the date of a post-dated check is a material alteration and, if unauthorized, makes it void.

Thus it was held in the case of Vance v. Lowther, 1 L. R. Ex. Div., 176, where the date of a check had been altered from March 2d to March 26th, and as thus altered was attempted to be enforced against the drawer by one who had paid value to an unlawful holder for it, that such alteration vitiated the check and no recovery could be had thereon.

Whenever the legal rights and liabilities of a maker of commercial paper are changed in a material respect by a fraudulent alteration of the obligation, such alteration vitiates the instrument, and the question whether it is material or not is one of law for the court. 2 Parsons on Notes & Bills, 582; 2 Parsons on Con., 721; Daniels on Neg. Inst., secs. 1373, 1658; Booth v. Powers, 56 N. Y., 29.

The absence of a date upon a negotiable instrument at its inception or the fact that it is past or antedated may not be material upon the question of its validity, but when a date has been once inserted and its time of payment has been thus fixed, such date is material and cannot be altered without the consent of the maker. Daniels on Neg. Inst., 1376–77, 1577–78; 2 Parsons on Notes, 552; Stephen v. Graham, 7 Serg. & R., 505.

When a negotiable instrument constitutes in itself the only obligation existing against its maker, all remedies thereon are lost by its fraudulent alteration, and the law refuses to create a new contract to supply the place of the one destroyed. Booth v. Powers, 56 N. Y., 31; Parsons on Bills, 572; Meyer v. Huneke, 55 N. Y., 412.

IN Wolsheimer v. Rurnus (Md. Ct, of Ap., July, 1885, 2 Eastern Rep., 65) the court had occasion to apply the statute of that State which forbids the making of any assignments with preferences. The somewhat slender objection taken to the assignment in that case was simply that the fee of the attorney or draftsman of the assignment was preferred.

The majority of the court were of opinion that this brought the case within the statute and avoided the instrument.

This rule is a little harsh upon attorneys, and, probably, not beneficial to creditors, but the court says that the indebtedness for preparing the assignment is a debt and equally within the condemnation as to preferences as are other debts, and that the assignor ought to have paid the fee out of his assets and assigned the residue.

NOTES OF RECENT DECISIONS.

Insurance: Obligation of a Company which Has Undertaken "to Restore."—An insurance company claimed the privilege of "restoring" a building partially destroyed by fire. The portion destroyed had been frame, and the builders employed by the insurance company started to restore it with like material; being notified by the building inspectors that a new erection in wood was illegal, the builders stopped work and the company neglected and refused to restore the building in brick. After some delay the insured undertook and finished such restoration himself.

Held, That under the agreement the insurance company was bound to effect the same state of repair suitable and appropriate for the purpose, whether by material of an equal or greater value. The fact that a police regulation prevented the use of wood, and that brick was not as cheap, will not operate to release the company from its obligation. The contract of insurance, and the election under it, were both made after the adoption of the city ordinance. The company was bound to use such materials as were suitable for the purpose and allowed by law.

The association having undertaken the work and afterwards abandoned it, some compensation was due to the assured for the delay which resulted; and, whilst rents, as such, were perhaps not recoverable, the rental value of the property was a proper element in the assessment. [Fire Association of Philadelphia v. Rosenthal; Supreme Court of Pennsylvania.]

Evidence: Res Gestæ; Lease not Signed.—In the course of a negotiation for a lease a paper was partly written by the defendant and handed by him to plaintiff, and by him interlined and returned to defendant, but neither signed it. On the trial question was whether the terms of the lease were those mentioned in the paper only, or were their terms agreed upon outside of it. *Held*, the paper was admissible as *res gestæ*. [Freeman v. Bartlett, S. C. N. J., 1885.]

Promissory Note: Liability of Guarantor; Waiver of Protest; Additional Guarantor; Liability of.—Plaintiff discounted a note for D. & G. which came due July 11, 1877. On that day the makers of the note, accompanied by the decedent, appeared at the bank, and in order to save the protest, decedent guranteed the payment of the note. On a subsequent day S., who was an indorser on the note, gave the bank a guaranty of all notes of D. & G. endorsed by him either matured or to mature, which was taken by the

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bank as an additional guaranty. In an action by the bank against decedent's estate,

Held, That the note, having not been protested in consequence of the guaranty by decedent, he was primarily liable for it, and that the plaintiff could only recover from S., the additional guarantor, in case after having used reasonable diligence it had failed to collect the note from the makers or prior guarantors. Mere knowledge by an indorser of the non-payment of a note is not notice. [First National Bank of Lancaster v. Zahm's Executor; Supreme Court of Pennsylvania.]

1. When the meaning of a will is doubtful, the court will incline to that construction which will effect the distribution that is most in harmony with the intestate act.

2. A penalty imposed by a testator upon his widow, in the event of her refusing to take under his will, is strong evidence against any interpretation of it by which she would receive a greater share than would have been awarded her in case of intestacy. [Suplee's Appeal, S. C. Penn., May 25, 1885.]

Fraud: Sale of Goods Induced by Fraud of Vendee; Title in Vendee until Disaffirmance of Contract by Vendor; Action of Trover or Replevin in Disaffirmance of it.—In the case of a sale of goods induced by the fraud of the vendee, the vendor may, except in cases involving a public wrong, the adjustment of which is against public policy, sue in assumpsit for the price in affirmance of the contract, or in trover or replevin in disaffirmance of it.

In such case the property vests in the vendee until the vendor has done some act to disaffirm the transaction.

If the sale and delivery were brought about by the fraud of the vendee, the vendor's reliance upon a promise to pay would not purge the transaction of the fraud upon which the promise was accepted.

If the fraud of the vendee be admitted or shown, a third party could have no title to the goods unless he obtained them *bona fide* and for a valuable consideration, and the burden would be upon him to prove the good faith and fairness of the transaction.

Proof of frauds of a precisely similar nature, perpetrated by the vendee at or about the same time on others, is clearly admissible on the question of intent. [Neff v. Landis, S. C. Penn.]

U. S. Supreme Court Proceedings.

DEC. 3, 1885.

Thornton H. Thomas, of Gunnison, Col., was admitted to practice.

No. 1063. William Hartoy v. Henry Memory; submitted under twentieth rule.

No. 80. The Bridgewater Iron Company v. Herman Lissberger; argument concluded.

No. 81. The Saxonville Mills v. Thomas Russell, late collector, etc.; argued.

No. 82. William H. Lee v. Enos Johnson; submitted.

No. 83. James J. O'Reilly et al. v. James W. Campbell; submitted.

No. 84. Joseph F. Field v. Oliver de Comeau et al.; passed.

No. 85. Green County, Mo., v. Alfred Huidekeper; dismissed with costs, pursuant to section 2, Rule 10.

No. 86. John F. Coyle v. Henry S. Davis et al.; submitted.

No. 87. The Northern Pacific Railroad Company v. Clayton D. Herbert; argument commenced.

DEC. 4, 1885.

Thomas M. Conway, of Silver City, N. M.; William Leese, of Lincoln, Neb.; Thomas Curley, of Boston, Mass., and R. Floyd Clarke, of New York city, were admitted to practice.

No. 320. A. L. Backus & Sons v. G. H. Start & Co.; dismissed with costs.

No. 1226. Arthur A. Levy v. Stephen W. Dorsey; dismissed with costs.

No. 931. Mathias Simmerman v. The State of Nebraska; motion to dismiss submitted.

No. 79. Peter Graffam et al. v. Christine J. Burgess; argued.

No. 80. The Bridgewater Iron Bompany v. Herman Lissberger; argument commenced.

IN EQUITY.—New Suits.

Nov. 27, 1885.

9721. Thomas Holden v. George W. Harvey. To settle partnership, &c. Com sol, E. D. F. Brady.

9722. George Mason v. George T. Cox et al. To correct title. Com sols, Edwards & Barnard.

Nov. 30, 1885.

9723. In re Joseph J. Coombs, alleged non compos mentis. Petition for committee.

9724. Julia E. Callahan v. Francis Callahan. For divorce. Com sol, Daniel Cahill.

CIRCUIT COURT.—New Suits at Law

Nov. 30, 1885.

26522. The U. S. v. John L. Hodge. Acct., $441,200 76. Piff's atty, A. S. Worthington.

Dec. 1, 1885.

26523. Charles Walter v. Thomas M. Reed et al. Jud6't of Justice Bundy, $32. Piffs atty, C. A. Walter.

26524. John T. Varnell & Son v. Geo. M. Hunt. Judg't of Justice Helmick, $77.78.

26525. Albin Owings v. Jeremiah Evans. Notes, $93.13. Piffs atty, E. H. Thomas.

PROBATE COURT.—Justice Hagner.

Dec. 4, 1885.

Estate of Mary J Wright. Caveat to the will filed.

In re Charles E. Hunt, minor. Order appointing Emily E. Hunt guardian. Bond, $1,000.

Estate of Timothy Sands. Will filed for probate and record.

Estate of Robert J. Douglass. Petition of Mary M. Douglass for letters.

Estate of G. H. Schley. Letters issued to Charles L. Dubois. Bond, $20,000.

Estate of John T. Newton. Letters granted to Adele J. Newton. Bond, $400.

Estate of Charles Pettifels. Order of publication.

Estate of Joseph H Herron. J. Whit. Herron appointed administrator Bond, $10,000.

Estate of John H. Brooks. Administrator ordered to sell personalty.

In re Catharine Huysman. Citation issued aginst guardian.

Estate of David Roach. Letters issued to Honora Roach. Bond, $400.

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Washington, D. C.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

ANDERSON et al. v. ANDERSON et al. } Equity. No. 9620.

Watson J. Newton, the trustee in the above entitled cause, having reported that he has received an offer of $925 for the real estate in the proceedings set out, from Frank M. Green. It is this 5th day of December, 1885, ordered that the offer be accepted and that the sale to the said Frank M. Green, be and is hereby ratified and confirmed unless cause to the contrary be shown on or before the 5th day of January, A. D. 1886.

Provided a copy of this order be published once a week for three successive weeks in the Washington Law Reporter and in th Evening Star before said last date.

By the Court. A. B. HAGNER.
A true copy. Test: 49 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Barbara Koch, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 5th day of December next; they may otherwise by law be excluded fron all benefit of the said estate.

Given under my hand this 5th day of December, 1885.

49 GEO. C. WALKER,
SIMON WOLF, Solicitor. Executor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Holding a Special Term for Orphans' Court Business. December 4th, 1885.

In the matter of the Will of Timothy Sands, late of the District of Columbia, deceased.

Application for the probate of the last Will and Testament of said deceased, dated October 27th, 1885, and for Letters Testamentary on the Estate of the said deceased, has this day been made by John D. Croissant and Mary E. Davis, two of the Executors.

All persons interested are hereby notified to appear in this court on Friday, the 8th day of January next at 11 o'clock a m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 49 H. J. RAMSDELL, Register of Wills.
WM. A. COOK, Solicitor.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court business. December 5th, 1885.

In the case of Job Barnard, Administrator of Isaac Cross, deceased, the Administrator aforesaid has, with the approval of the Court appointed Friday, the 8th day of January A. D. 1886, at 11 o'clock, a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 49 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. December 2, 1885.

In the case of Calderon Carlisle, Administrator of Davis Richards, dec'd, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 8th day of January, A. D. 1886, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 48 H J. RAMSDELL, Register of Wills.
No. 1740, A. D., 11.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Sitting in Equity. December 2, 1885.

FRANCIS F. BUTLER et al. v. MARY ANN BUTLER et al. } 9687. Eq. Doc. 25.

Edward J. Stellwagen, trustee appointed by decree of this Court in the above-entitled cause to sell the real estate in said proceedings described, to wit: sut-lot 3, in square numbered one hundred and sixty-three (163), in the City of Washington, District of Columbia, having reported to the Court that, after complying with the requirements of said decree, he offered for sale at public auction the aforesaid property on the 30th day of November, A. D. 1885, and that Titian J. Coffey and Mary Ker Coffey, of the said City of Washington, became the purchasers thereof, at and for the sum of $8,245.00;

It is, by the Court, on the 2d day of December, A. D. 1885, ordered that said sale be, and the same is, hereby ratified and confirmed, unless cause to the contrary be shown on or before the 2d day of January, A D. 1886.

Provided, a copy of this order be published in the Washington Law Reporter once a week for three weeks before said 2d day of January, A. D. 1886.

A. B. HAGNER.
A true copy. Test: 49 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration on the personal estate of Joseph H Herron, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of December, 1885.

49 J. WHITLEY HERRON,
GEO. F. GRAHAM, Solicitor. Star Office.

THIS IS TO GIVE NOTICE.

That the subscriber, of Washington, D. C., has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Emeline M. Morse, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of December next; they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 5th day of December, 1885.

49 ALICE H. MORSE, Administratrix.

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Legal Notices.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Manuel J. Gonzales, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 30th day of November next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 30th day of November, 1885.
CHARLES W. HENSHAW,
H. B. MOULTON, Solicitor. 49 Executor.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Adminstration on the personal estate of Conde de Gibacoa, late of Havana, Cuba, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of December next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 2d day of December, 1885.
49 B. F. LEIGHTON
Administrator.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Rosa A. Sculi, late of Havana, Cuba, deceased
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 2d day of December next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 2d day of December, 1885.
49 B. F. LEIGHTON,
Administrator.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Jose Suarez Argudin, late of Havana, Cuba, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of December next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 2d day of December, 1885.
49 B. F. LEIGHTON,
Administrator.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters of Administration on the personal estate of Conde de San Fernando de Penalver, late of Havana, Cuba, dec'd.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 2d day of December next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 2d day of December, 1885.
49 B. F. LEIGHTON,
Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. December 2d, 1885.
In the case of Samuel H. Walker, Adm'r of Wm. T Hook, dec'd, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 8th day of January, A. D. 1886, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided. a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.
Test: 48 H. J. RAMSDELL, Register of Wills.
No. 1718, A. D., 11.
A. B. DUVALL, Solicitor.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 1st day of December, 1885.
JULIA E. CALLAHAN v. FRANCIS R. CALLAHAN. } No 9724 Equity Docket, 25.
Application for divorce on the ground of adultery and desertion
On motion of the plaintiff, by Mr. Daniel E. Cahill, her solicitor, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.
By the Court. A. B. HAGNER, Justice.
True copy. Test: 48 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 4th day of December, 1885.
AMELIA V. HAMILTON v. The UNKNOWN HEIRS of WILLIAM N. GRAHAM, dec'd. } No. 9729. Eq. Doc. 25
On motion of the plaintiff, by Mr. John J. Weed, her solicitor, it is ordered that the defendants, the unknown heirs of William N. Graham, deceased, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.
By the Court. A. B. HAGNER, Justice.
A true copy. Test: 48 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE,
That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration on the personal estate of Guynilda H. Schley, late of the District of Columbia, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of December next; they may otherwise by law be excluded from all benefit of the said estate.
Given under my hand this 4th day of December, 1885.
49 CHARLES L. DU BOIS,
605 7th St., N. W.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Sitting in Equity. December 1, 1885.
ANN BEAN et al. v. JOSEPH HYMER et al. } 1224. Eq. Doc. 8.
Upon consideration of the report of A. Thomas Bradley, trustee, filed herein, it is by the Court this 1st day of December, A. D 1885, ordered and decreed that the offer of John F. Donohue to purchase lot five in square seven hundred and seventy, as stated in said report, be hereby accepted, and that the sale of said lot to him be ratified and confirmed unless cause to the contrary be shown on or before the 1st day of January, 1885.
Provided a copy of this order be inserted in the Washington, Law Reporter, once a week for three successive weeks before said last mentioned day.
A. B. HAGNER.
True copy Test: 48 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Ignacio Montalvo y Calvo, late of Paris, France, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 2d day of December, next; they may otherwise by law be excluded from all benefit of the said estate,
Given under my hand this 2d day of December, 1885.
B. F. LEIGHTON,
49 Administrator.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Marquis Jose de Campo, late of Madrid, Spain, deceased.
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 3d day of December next; they may otherwise by law be excluded from all benefit of the said estate,
Given under my hand this 3d day of December, 1885.
B. F. LEIGHTON,
E. E. HOLMAN, Solicitor. 49 Administrator.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

NELLIE F. PUMPHREY et al.
v.
ELIZABETH A. PUMPHREY et al. } 9410. Eq. Doc. 24

The trustees in the above-entitled cause, having reported that they have made sale of original lot 40, and lots 55 to 62, both inclusive, of their subdivision of original lots 41 and 42, in square No 503, in the City of Washington, D C, at prices aggregating $7,559.63, and upon the terms fixed by the decree of sale, and the said trustees having further reported an offer at private sale of $328.78, received by them for lot 1, in square south of square south of square 667, in said City, in accordance with said terms:

It is, by the Court, this 27th day of November, A. D. 1885, ordered, that the said sales made, be ratified and confirmed, and also that the said trustees be, and they hereby are authorized to accept said offer for lot 1, in square south of square south of square 667, at private sale, unless cause to the contrary hereof be shown on or before the 27th day of December, 1885.

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said last-mentioned date.

A. B HAGNER.
A true copy. 48 Test: R. J. MEIGS, Clerk

THIS IS TO GIVE NOTICE,

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Wm Wallace Greenfield late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 22d day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of October, 1885.

E EMMA GREENFIELD,
GORDON & GORDON, Solicitors. 48 Executrix.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business. November 27th, 1885.

In the case of Thomas J. Myers, Administrator of Frances Blanchard, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 18th day of December, A. D 1885, at 11 o'clock, a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 48 H. J. RAMSDELL, Register of Wills.
CARUSI & MILLER, Solicitors.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 25th day of November, 1885.

REBECCA H. HILL
and
THE CONNECTICUT GENERAL LIFE INSURANCE COMPANY,
v.
JOHN C. TEN EYCK, MARY TEN EYCK, JULIA TEN EYCK, JANIE SAUNDERS and JULIA HILLHOUSE. } No. 9710. Equity Docket, 25.

On motion of the plaintiffs, by Messrs Charles D. Fowler and Samuel R. Bond, their solicitors, it is ordered that the defendants, John C, Ten Eyck, Mary Ten Eyck, Julia Ten Eyck, Janie Saunders and Julia Hillhouse, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 48 R J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 25th day of November, 1885.

SARAH SNOWDEN
v.
H. CLAY JOHNSON et al. } No. 9716. In Equity.

On motion of the plaintiffs, by Mr. Neal T. Murray, her solicitor, it is ordered that the defendants, A. Howard Johnson and Ella V. Hickman, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. 48 Test: R. J. MEIGS, Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

ANNA ELIZA BARNARD et al.
v.
WILLIAM RUSSELL WHITING et al. } 9537, Eq. Doc. 25.

Randolph Coyle' the trustee in the above-entitled cause, having this day reported to the Court the sale by him on the twenty-first instant of the real estate involved in this cause, to John R. McLean, at and for the price of $22,000.00 to be paid in cash, upon the final ratification of the sale by the Court, without interest:

It is, by the Court, this 23d day of November, A. D. 1885, ordered that the sale so reported be, and the same hereby is, ratified and confirmed, unless cause to the contrary thereof be shown on or before the 23d day of December, A. D. 1885.

Provided, that a copy of this order be published in the Washington Law Reporter, once a week for three successive weeks before said last-mentioned date.

A. B. HAGNER.
A true copy. Test: 48 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. November 27th, 1885.

In the case of George W. Brown, Adm'r of Maurice N, Grossmann, deceased, the Adm'r aforesaid has, with the approval of the court, appointed Friday, the 18th day of December A. D. 1885, at 11 o'clock a. m, for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 48 H. J. RAMSDELL, Register of Wills.
HENRY WISE GARNETT, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, November 27th, 1885.

In the matter of the Estate of Cornelius Donovan, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Richard T. Donovan, who prays that said letters may be granted to Matthew G. Emery, jr.

All persons interested are hereby notified to appear in this court on Friday, the 18th day of December next, at 11 o'clock a m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 48 H. J. RAMSDELL, Register of Wills.
W. K. DU HAMEL, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 28th day of November, 1885.

EDMUND FITZGERALD
v.
MATILDA GRAHAM et al. } No. 9502. Eq. Doc. 25.

On motion of the plaintiff, by Messrs. Hine & Thomas, his solicitors, it is ordered that the defendant, Sarah Graham, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise this cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
True copy. Test: 48 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Wm. Pinkney Brooks, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of November, 1885.

48 WM. E. CLARK,
GORDON & GORDN, Solicitors, Administrator.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia. November 14, 1885.

JAMES A. THOMAS et al. v. ARTHUR F. THOMAS et al. } 9565. Eq. Doc. 25.

This cause coming on to be heard upon the report of the trustee filed herein on the 14th day of November, A. D. 1885, it is, this 14th day of November, A. D. 1885, by the Court, ordered, adjudged and decreed, that the sale of the real estate mentioned in the bill filed herein to Mary Clarke, reported by the the trustee, Chapin Brown, in the report above-named, be and the same is hereby ratified and confirmed unless cause to the contrary be shown on or before the 14th day of December, A. D. 1885.

Provided a copy of this order qe published once a week for three successive weeks in the Washington Law Reporter previous to said 14th day of December, A. D 1885.

A. B. HAGNER.

A true copy. Test: 47 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscribers of the District of Columbia have obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Benedict Milburn, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscribers on or before the 13th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 13th day of November, 1885.

WM. G. HENDERSON,
WM. F. MATTINGLY,
47 Administrators.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of John Brent, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 16th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of November, 1885.

WILLIAM L. FREEMAN,
A. K. BROWNE, Solicitor 47 Executor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 21st day of November, 1885.

JOHN G LEE v. WILLIAM P. LEE et al. } No. 9659. Equity Docket, 25.

On motion of the plaintiff, by Mr. Chapin Brown, his solicitor, it is, this 21st day of November, A. D. 1885, ordered that the defendant, William P. Lee, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
True copy. Test: 47 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration d b n.c.t a. on the personal estate of Benjamin Alvord, late of the District of Columbia, decd.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber, on or before the 20th day of November next: they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of November, 1885.

47 BENJ ALVORD.
GEO. E. HAMILTON, Solicitor. Administrator d.b.n.c.t a

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Emily L. Alvord, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 20th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of November, 1885.

47 BENJ. ALVORD,
GEO. E. HAMILTON, Solicitor. Executor.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, this 9th day of November, 1885.

CALVIN NASH et al. v. ROBERT NASH et al. } 8928. Eq. Doc. 24.

Andrew A. Lipscomb, trustee in this cause, having reported the sale of all the real estate and premises described in these proceedings to James Fraser, esqnire, for the sum of $2,214.98 cash; but by an error the order nisi heretofore issued, recites their sale to Charles Fraser: It is, this 9th day of November, A. D. 1885, ordered by the court that the said sale to said James Fraser, as reported by said trustee, be ratified and confirmed unless cause to the contrary be shown on or before the 9th day of December, A. D. 1885; provided a copy of this decree be published once a week for three successive weeks before that day in the Washington Law Reporter.

By the Court D. K. CARTTER, Ch. Justice.
A true copy. Test: 46 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

MARY T. DAYTON v. CORNELIA H. DAYTON et al. } 7801. Eq. Doc. 21.

On consideration of the report of James M Johnston, trustee in said cause, filed the 30th day of September, 1885, it is, by the court, this ninth day of November, 1885. Ordered that the sale of original Lot numbered eleven (11) in Square numbered six hundred and thirty-six (636) to John T. Arms, esquire, at and for the sum of twenty four cents per square foot, payable in cash, be ratified and confirmed unless cause to the contrary be shown on or before the 9th day of December, 1885; and provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before the said day.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 46 R. J. MEIGS, Clerk

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 10th day of November, 1885.

THOMAS H. JONES v. CASSIE M. JONES. } No. 9651. Equity Doc. 25.

Application for divorce on the ground of cruelty, etc.

On motion of the plaintiff, by Mr. T. J. Mackey, his solicitor, it is ordered that the defendant, Cassie M Jones, cause her appearance to be entered herein on or before the first rule-day, occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. D. K. CARTTER, Ch. Justice.
A true copy. 46 Test: R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 11th day of November, 1885.

HENRY MASON v. REBECCA MASON. } No. 9668. Equity.

On motion of the plaintiff, by Mr Thomas F. Miller, his solicitor, it is ordered that the defendant, Rebecca Mason, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. D. K. CARTTER, Ch. Justice.
True copy. Test: 46 R. J MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 11th day of November, 1885.

AARON H. FREAR v. JOHN INGLE CASH. } No. 9688. Equity.

On motion of the plaintiff, by Mr. Chas. A. Elliot, his solicitor, it is ordered that the defendant, John Ingle Cash, made defendant in a suit to quiet title to parts of original Lots Nos. 13 and 14 in Square No. 733, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day, otherwise the cause will be proceeded with as in case of default.

By the Court. D. K CARTTER, Ch. Justice.
A true copy. Test: 46 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William Edelen, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 9th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of November, 1885.

WILLIAM SMALL, Adm'r.
46 Room 27 Pacific Building, Washington, D. C.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 13th day of November, 1885.

MARY GANNON.
v.
WILLIE MCGUIRE, JOHN MCGUIRE and JONATHAN B. H. SMITH. } No. 9677. Equity.

On motion of the plaintiff, by Mr. John J. Johnson, her solicitor, it is ordered that the defendants, Willie McGuire, John McGuire and Jonathan B. H. Smith, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day, otherwise the cause will be proceeded with as in case of default.

By the Court: A. B. HAGNER, Justice, &c.
True copy. Test: 46 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Jane Campbell, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of November, 1885.
FRED. W. JONES.
46 Executor.

THIS IS TO GIVE NOTICE

That the subscribers, of the District of Columbia have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Levin M. Powell, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscribers, on or before the 6th day of November next; they may otherwise by law be excluded from all benefit of said estate.

Given under our hands this 6th day of November, 1885.
CHARLES D. DRAKE,
W. B. WEBB,
46 Executors.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Edward W. Tiers, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 30th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of October, 1885.
46 CLAIRE E. TIERS, Adm'x.
CHAS. PELHAM, 52 Corcoran Building, Solicitor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of John C. P. de Krafft, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of November, 1885.
ELIZABETH S. DE KRAFFT,
46 Administratrix c. t. a.

THIS IS TO GIVE NOTICE:

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John F. Hanna, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of November next: they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of November, 1885.
E. CECELIA HANNA,
JAS. M. JOHNSTON, Solicitor. 47 Administratrix.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term in Equity.

MARY R. SQUIRES et al.
v.
JOHN F. GARNER et al. } 9551. Equity docket 25.

E. H. Thomas and Henry Wise Garnett, trustees in the above-entitled cause, having reported the sale of the property mentioned in these proceedings, being sub-lot thirty (30) in square four hundred (400), to W. P. H. Crews, for forty-six hundred dollars ($4,600.00), and that the purchaser has complied with terms of sale and offers to pay all the purchase-money in cash:

It is, this 17th day of November, A. D. 1885, ordered, that the said sale be, and the same hereby is, confirmed and ratified, and the purchaser have leave to pay all the purchase-money in cash, unless cause to the contrary be shown on or before the 17th day of December next.

Provided that a copy of this order be published in the Washington Law Reporter once a week for three (3) successive weeks prior to the said day last mentioned.

A. B. HAGNER.
True Copy. Test: 47 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 25th day of November, 1885.

WILLIAM CAMERON et al.
v.
JOHN MITCHELL et al. } In Equity. No. 9718. Doc. 25.

The object of this suit is to declare void and cancel six tax deeds from the District of Columbia to Mary H. Cameron, dated September 11, 1871, purporting to convey to her all of lot 26, in square 28, except the south 16½ feet; all of sub lots U. A. M. E. R. O. N., in square 77; sub lot 5, in Davidson's Subdivion of lots 5 et al., in square 166; and parts of lots 1 and 2 in square north of square 351; all of said property being in Washington City, in the District of Columbia, and fully described in the bill; and to remove said cloud from the title of the complainants, who claim as devisees of Gilbert Cameron, deceased.

And, it appearing to the Court from the allegations of the bill, that the defendants, John Mitchell, James Mitchell and Margaret Mitchell Hughes, who are named as defendants theaein, are not resident in this jurisdiction, but reside in Scotland, Great Britain, at or near Glasgow, and the subpœna in this cause having been returned "not to be found" as to said defendants, it is this 25th day of November, 1885, on motion of Messrs. McPherson & Carlisle, the solicitors for the complainants, ordered that the said defendants, John Mitchell, James Mitchell and Margaret Mitchell Hughes, cause their appearance to be entered herein on or before the first rule-day occurring sixty days after this day: otherwise the cause will be proceeded with as in case of default. And that publication of this order be made once a week for six successive weeks in the New York Herald and the Washington Law Reporter.

A. B. HAGNER, Associate Justice.
True copy. Test: 48-6 R. J. MEIGS, Clerk.
By L. P. WILLIAMS, Assistant Clerk.
MCPHERSON & CARLISLE, Solicitors, 307 D Street, N. W., Washington, D. C.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Louis Simon, late of Western Terrace, Nottingham, County of Nottingham, England, deceased,

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of November, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of November, 1885.
48 CHARLES E. FOSTER,
WM. G. HENDERSON, Solicitor. Administrator.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Joseph Steinberger, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of November, 1885.
48 TENIA STEINBERGER,
LEON TOBRINER, Solicitor. Administratrix.

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Washington Law Reporter

WASHINGTON - - - - - December 12, 1885.

GEORGE B. CORKHILL - - - EDITOR

THE Supreme Court of Illinois has decided, in the case of Pennsylvania Railroad Company v. Connell, that through tickets, in the form of coupons, sold to a passenger by one railroad company, entitling him to pass over successive connecting lines of road, in the absence of an express agreement, create no contract with the company selling the same, to carry him beyond the line of its own road, but they are distinct tickets for each road, sold by the first company as agent for the others so far as the passenger is concerned. Where a coupon ticket has been sold, calling for passage over several distinct lines of railroad, the rights of the passenger, and the duty and responsibility of the several companies over whose roads the passenger is entitled to a passage, are the same as if he had purchased a ticket at the office of each company constituting the through line. Where a conductor of a railway company, acting under instructions from his superior, refuses to accept a ticket issued by another company, as agent of the former, and demands full fare, the passenger, if his ticket was issued by authority, may pay the fare again, recover of the company requiring payment the sum paid, as for a breach of contract, or he may refuse to pay, and leave the train when so ordered by the conductor, and sue and recover of the company all damages sustained in consequence of his expulsion from the train; but if he refuses to leave, he cannot recover for the force used by the conductor in putting him off, when no more force is used than necessary, and the expulsion is not wanton or wilful.

world *does* move and is taking Pennsylvania along with it. Heretofore the rule of fact, if not of law, in that State has been that there was no defence to an action of libel. In a recent case, however, a Pennsylvania court actually instructed the jury that as the plaintiff had opened a public institution, any just report or criticism of his methods of teaching was privileged, and that the verdict should be for the defendant, unless they found that the report was so unreasonable and outrageous that no person could have made it upon the materials before him, and was the result of actual malice. The jury, from force of habit, gave a verdict of $1,200; but now that the courts have reformed, the juries will probably follow in time.

THAT is a sad picture of human passion and cupidity brought to light in a New York court some short time ago. A Mrs. Simmons gets a divorce from her husband in order to marry a wealthy consumptive named Henry, with whom she lives a few months, when he dies and leaves her and their child $100,000, and now Henry's father brings suit to have the will set aside on the ground of undue influence. The jury may decide between the father and daughter-in-law in their pitiful scramble for money, but what court can recompense the deserted husband for his broken home, or the orphaned grandchild born heir to a terrible and incurable disease?

THE Supreme Judicial Court of Massachusetts, in the case of Mason v. Mason, says, that a conveyance of a right of dower by a wife in the lifetime of her husband is void, and cannot operate against her by way of estoppel in equity. She can bar her right of dower in no other mode than as prescribed by the statute of the State.

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Supreme Court District of Columbia

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY

THE DISTRICT OF COLUMBIA
vs.
THE WASHINGTON & GEORGETOWN RAILROAD COMPANY.

LAW. No. 22,457.

THE DISTRICT OF COLUMBIA
vs.
THE METROPOLITAN RAILROAD COMPANY.

LAW. No. 22,458.

{ Decided June 15, 1885.
{ Justices COX, JAMES and MERRICK sitting.

1. By the charters of the Washington & Georgetown and of the Metropolitan street railroad companies they are required to keep their tracks "for the space of two feet beyond the outer rail thereof, and also the space between the tracks at all times well paved and in good order." *Held*, that this language involved the obligation to construct a pavement where one did not exist on the line of their roads.
2. The authorities of the District have the right to prescribe the material of which this pavement shall be composed, and if a pavement has already been constructed, they may direct it to be removed and a pavement of a different character substituted.
3. Whenever the District authorities direct the grade of the the street or character of the pavement to be changed, it becomes the duty of the companies to conform their roads to the change.
4. And this obligation does not depend upon notice to the companies, it is incurred the moment they have knowledge that the change is begun or contemplated.
5. The District, on the failure of the companies to do the work, did the work itself, and thereupon issued certificates of indebtedness for the cost thereof against the roads. These certificates it sold to third parties. *Held*, that the District had no authority to issue such certificates, and the purchase of them by third parties gave the latter no right of action against the companies, nor did it discharge the liability of the companies to the District. Whether the District would be responsible to the purchasers for the money paid for these certificates is a question which cannot concern the companies.
6. The District is responsible for the condition of its streets, and in this respect stands in the relation of surety for the performance by the companies of their obligation to keep their roads in good condition; hence, on default being made, it may at once do the work and sue in *assumpsit* for the cost on the same theory that a surety, who discharges the defaulted obligation of his principal, does so upon his implied request and upon his implied promise to indemnify.

THE CASE is stated in the opinion.

A. G. RIDDLE and HENRY E. DAVIS for plaintiff.

W. D. DAVIDGE and NATHANIEL WILSON for Metropolitan Railroad.

ENOCH TOTTEN for Washington & Georgetown Railroad.

Mr. Justice Cox delivered the opinion of the court.

These were separate actions brought by the District of Columbia against the Washington and Georgetown Railroad Company and the Metropolitan Railroad Company respectively.

The charters of these two companies were passed respectively in the years 1862 and 1864. The charter of the Washington & Georgetown Railroad Company contains, in its fourth and fifth sections, the following provisions:

SEC. 4. "That the said corporation hereby created shall be bound to keep said tracks, and for the space of two feet beyond the outer rail thereof, and also the space between the tracks, at all times well paved and in good order without expense to the United States or to the cities of Washington and Georgetown."

SEC. 5. "That nothing in this act shall prevent the government, at any time at their option, from altering the grade or otherwise improving Pennsylvania avenue and such other avenues and streets as may be occupied by said roads, or the cities of Washington and Georgetown, from so altering or improving such streets and avenues as may be under their respective authority and control; and in such event it shall be the duty of said company to change their said railroad so as to conform it to such altered grade and pavements."

The provisions of the fourth and fifth sections of the charter of the Metropolitan Railroad Company are substantially the same as those of the Washington & Georgetown.

The declaration in each case set forth the defendant's charter, and in substance avers that the defendant failed to execute the work required of it by its charter, and the plaintiff was therefore compelled to cause the work to be executed at its expense, and hence a right of action has arisen to recover that expense from the defendant.

In the course of the argument, the first question that was presented was, whether

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the obligation to keep the road at all times well paved and in good condition involved the obligation to construct the pavement where one did not originally exist. We are unable to see how that obigation can be fulfilled, of keeping the streets well paved, without constructing a pavement where one did not exist, and substantially that obligation was finally conceded in the course of the argument.

It was also conceded—in fact it could not be avoided, because the language of the law is too explicit—that when a change of grade was ordered by the authorities of the District, it became the duty of the defendant company to conform its road to that grade, and also to reconstruct its pavement in conformity with it.

The first really serious controverted question is whether the authorities of the District, who at that time were represented by the Board of Public Works, had a right to prescribe the nature of the material of which this pavement should be composed; so that if a pavement had already been constructed before the time of the Board of Public Works, whether it could ordain that it should be removed and a pavement of a different character substituted.

Before these charters were passed the authority of the city of Washington was derived from its charters of 1812 and 1820, and under those charters, the power was vested in the corporate authorities to cause the sidewalks and carriageways of the different streets to be paved upon the application of the abutting proprietors, and to charge the entire cost of the work to them. There was no restriction whatever; the corporate authorities were given control over the whole subject of pavements, including the grading, the material and everything else.

Excepting the entrance into the city, allowed by its charter to the Baltimore & Ohio Railroad Company, the granting of these two charters to the city railways was the first instance in the history of the city, probably, in which a private corporation was allowed to occupy for its business any part of the public highway. It is to us inconceivable that such corporations should be allowed an uncontrolled discretion as to material, or as to any other question attending the exercise of this power. Here was the general control of the subject vested in the municipal corporation, and afterwards a private corporation was authorized to occupy a part of the public streets and the obligation imposed upon it of keeping that part well paved and in good condition. I say it is inconceivable that an uncontrolled discretion could have been intended to be vested in this private corporation. Naturally a collision would arise between this corporation—this private body—and the public authorities of the town upon this identical question, and the power must be lodged somewhere of determining of what material a street pavement should be composed. Now we should expect, before examining the law, to find somewhere that the power of the private body was subjected to some public control, and looking at the charter, with this conviction or, as you may call it, this prepossession, we find that a clause of the first section provides: "That the use and *maintenance* of said road shall be subject to the municipal regulations of the cities of Washington and Georgetown, respectively within their several corporate limits," &c. Perhaps the term use might be limited to the mere service of transporting passengers. But the *maintenance* of the road involves more; it involves the maintaining or keeping it, and applies as well to the construction of the road as to the maintenance of it. It seems to us that to subject the maintenance of the road to the municipal regulations subjects the whole question of construction to the general control of the public authorities. But, going further, we find in section 5 that it is enacted: "That nothing in this act shall prevent * * * the cities of Washington and Georgetown from so altering or improving the streets and avenues," and then it is declared to "be the duty of said company to change their said railroad so as to conform to such altered grade and pavements." The word "such," of course, refers to an antecedent, and as the term "pavements" had not been previously used in the statute, it was evidently included in the general term "improvements." That is to say, that nothing in the act should prevent the Government or the cities from altering the grade or otherwise improving the streets and avenues by new

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pavements or what not, and that then it should be the duty of the company to change the roadways to conform to such grade and pavement. Now, taking this in connection with the previous section that imposed upon the defendant company the duty of keeping the tracks well paved, and the requirements of this section that whenever the grade should be changed they were required to conform their road to the new pavement, it seems to us that a fair construction is that it devolves upon the corporate authorities the duty to prescribe the manner in which this new pavement should be constructed by the company Then, in 1871, while this was the relation between these private corporations and the corporations of the two cities, came the act which abolished the late corporate authority and established a new Government for the District of Columbia by which, in the 37th section thereof, is enacted, "That the Board of Public Works shall have entire control of and make all regulations which they shall deem necessary for keeping in repair the streets, avenues," &c. Could language be more comprehensive than this? There might be a question whether language more comprehensive than that contained in the charters of the city, could affect the chartered rights of the private corporations, already vested in them, but, as we have already expressed the opinion, that the corporate authorities of Washington and Georgetown had ample control of the subject, we think it only necessary for us to say that that control is vested in the new body, to wit, the Board of Public Works, and, therefore, we hold that that board had the right, in ordaining improvements and altering the grade, to prescribe the materials of which the entire new street should be constructed.

The main point relied upon in this case by the defence in argument is, that the obligation of the companies was to construct these pavements only upon notice and demand that they should do so, and that they were not in default until that time, and that the District of Columbia authorities had no right to do that work and charge the cost to the defendant unless they had first been in default and failed to discharge their duty.

Now that will depend somewhat also upon the construction of the charters of the two companies. Repeating the language of section 5:

"That nothing in this act shall prevent the Government at any time, at their option, from altering the grade or otherwise improving Pennsylvania avenue and such other avenues and streets as may be occupied by said roads, or the cities of Washington and Georgetown, from so altering or improving such streets and avenues as may be under their respective authority and control; and in such event it shall be the duty of said company to change their said railroad so as to conform to such altered grade and pavements."

We see that it prescribes, not that it shall be their duty *on demand and notice*, but *upon the happening af an event*, and that event simply was the alteration of the street by the corporate authorities or by the United States.

Now it is true that when a person is bound by a contract to do a certain thing upon the happening of an event, the knowledge of which is confined to the other party to the contract, he is not in default for not doing the thing until that knowledge is communicated to him. But in this case it would be preposterous to maintain that these companies did not have ample knowledge and *notice*, in that sense, of the proposed progressive improvements and changes. The law does not require that they shall execute the work upon being notified and demand being made upon them to do it, but in the event of a change being made by the United States or by the District authorities. All that is necessary for them to have is knowledge that the proposed improvement is begun or contemplated. That knowledge may be derived from any other source than the corporation. The first stroke of a pick in the streets would be sufficient to bring knowledge home to them. The first block of wood pavement, or the first wheelbarrow of dirt, placed along the street or thrown into it, would be sufficient to communicate a knowledge which would raise the obligation to conform to the proposed alteration.

Now, taking up first the case of the

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Washington & Georgetown Railroad Company, it is very easy to find in the record—both in the correspondence and in the testimony—ample evidence of knowledge on the part of the defendant that the work was going on. We find, for instance, page 59 of the record, under date of April 9, 1872, a notice from the vice president of the Board of Public Works to the president of the railroad company, that—

"The board are now paving the carriageway and east side of Centre Market from canal bridge to Pennsylvania avenue with treated wood. It is noticed that you are paving between and in the railroad tracks with cobble stone. The board intend to have the whole carriageway paved alike and have so directed the contractor."

Again, another letter under date of May 20, 1872:

"Mr. L. S. Filbert has been directed to remove the cobble stones from between the tracks of the railroad on New York avenue, between 14th and 15th streets, and at the intersection of New York avenue and 14th, and to pave the same with the Scharfe pavement, the same as the rest of the street," &c.

So in the testimony on page 67:

"The plaintiff then called as a witness the superintendent of the defendant, and by him gave evidence tending to prove that he was such superintendent during the years 1871, 1872, 1873 and 1874, and that when the pavements mentioned in the declaration were laid along the line of the railroad of the defendant, in the streets and avenues mentioned in the declaration, he knew of the laying of such pavements, and that the cars of the defendant, in charge of its conductors and drivers, were running along and over the said streets and avenues before and during the progress of said work, and that the grade of defendant's railroad was, from time to time, by it changed and altered, as occasion required, during the progress of said work so as to conform to the grade established by the plaintiff, and the space between the exterior rails of the defendant's railroad was, when the grade was changed, paved by it while the plaintiff was improving the streets and avenues mentioned in the declaration."

Perhaps the most conclusive fact, however, upon this question is that the railroad company, claiming that it had the right to lay this pavement and that the District had not the right to do it, filed its bill in this court to enjoin the District from laying the pavement between the exterior rails of its two tracks, and obtained an injunction against it, and then actually did the work between its rails, which the Board of Public Works required to be done. This action is brought against this company, not for that work, but for the work of laying the pavement between the exterior rails and a line two feet outside of them on each side of the double tracks, that part of the work which the statute required the company to do and which it did not perform, leaving that to be done by the District; the work between the rails was executed by the company itself.

Now, of course, this very proceeding to enjoin the District from executing the work from between the rails is proof demonstrative that the company was well advised of the work that the board had directed to be done. Knowing of that then, and actually doing the work within the exterior rails, the company simply failed to do the work required of them between the exterior rails and a line two feet outside. They never offered to do that, as the evidence shows, but acquiesced in the execution of that work by the District authorities.

Here then, is proof of an omission or failure on the part of the defendant to do the work, if an omission or default is necessary to give a right to the District, on default, to execute the work and charge the cost to the defendant. The ground upon which that right is rested will be considered a little further on.

Another point made by the defence is, that the District authorities proceeded upon the theory that the railroad company had not the right to do this work between the rails, but that the District had the right, and it was their duty to execute the work itself. It is not claimed that the District authorities—the Board of Public Works—claimed that they had a right or admitted that it was their duty to do this at the expense of the District ultimately,

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but simply that they had a right to do the work in the first instance, and at the expense of the defendant. That they expected the defendant to pay for it is very clear from the whole of the testimony.

It appears from an abstract from the minutes of the Board of Public Works, under date of August 21, 1872, that Mr. Riker, the president of the defendant company, was at one time personally present before the board, and this took place:

"Mr. Riker *et al.*, representing the W. & G. R. R. Co., called upon the board in relation to the track on Pennsylvania avenue east, and were informed that the board would not consent to have the track remain in the centre of the street as at present, but would insist upon its being removed to either side of the park from 1st to 8th street east. The board said that, so far as they were concerned, they were inclined to assess the property of the railroad company in the same manner as that of private individuals were, under the law, if it could be done."

Immediately after the execution of the work, the Board of Public Works issued certificates of indebtedness against the property of the company. What they did claim was, that having this entire control over the streets, and having a responsibility for their condition, they must do the work in the first instance, but charge it to defendants.

But it is claimed that this was a groundless pretence upon the part of the board, and that they had no right really to interfere with the companies in the execution of the work, that they really took it out of their hands to do the work, which the statute required them to do, and prevented them from performing their contract; in other words, it is insisted that the defendants were not in default. Now, it is true if one party to a contract prevents the other party from performing his part of it, it does not lie in his mouth to claim a default. If the District authorities by setting up this claim prevented the defendant from doing the work, perhaps there might be some ground upon the part of the defence for resisting, at least, the claim to the extent to which it is made by the District authorities. Did this claim upon the part of the District prevent either of the defendants from doing the work which the statute required them to execute. This is answered in the injunction proceedings to which I have already referred.

The Washington & Georgetown Railroad Company, denying the right of the District authorities to do the work, obtained an injunction against the Board of Public Works preventing them from doing the work between the exterior rails. Therefore it is plain that the claim of the District authorities did not prevent the company from doing the work. The very contrary was established by the case in question. They did the work to the extent to which they asserted the right to do it, that they desired to do it, but not to the extent to which the law imposed the duty upon them to do it.

In the case of the Metropolitan Railroad Company, there was no effort made to interfere with the District authorities, but the latter were allowed tacitly to go on and do the whole of the work.

In the case of the Washington & Georgetown Railroad Company, the District was prevented from doing the work between the rails, but the company tacitly acquiesced in the execution of the work outside of the rails. It is therefore plain, as it seems to us, that this position taken by the District did not prevent the defendant from executing its duty, and therefore was not a discharge and did not prevent it from being in default.

Another question is made as to the effect of the acts of Congress of June 19, 1878, and June 27, 1879, which are said to ratify the assessments made by the Board of Public Works. It is said that the Board of Public Works, in executing this work or a part of the work, undertook to issue certificates of indebtedness against the property of the railway company, and also that in some instances their course of proceeding was to charge the whole cost of the paving of the street, including the cost of paving which the defendant company had to do, against the adjoining lot holders. Now, in 1878, as we know, an act of Congress directed that the Commissioners of the District of Columbia should proceed to collect the assessments made in pursuance of the act of the legislative assembly of August 23,

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1871. It is said that this act was a ratification of the assessments of the cost against the lot holders and that it was not afterwards in the power of the Board of Commissioners to change that assessment and recharge a portion of it to the railroad company; that is, to re-charge to the railroad company so much of the cost of the pavement of the street as they ought to have done in the first instance. We do not understand that the law had any such operation as that at all.

It will be remembered that the power of assessing that was conferred upon the Board of Public Works, was "to assess in such manner, as shall be prescribed by law, upon the property adjoining and to be specially benefited by the improvements authorized by law, and made by them, a reasonable proportion of the cost of improvement, not exceeding one-third," &c.

(*Concluded next issue.*)

United States Supreme Court.

No. 50—OCTOBER TERM, 1885.

ALEXANDER R. SHEPHERD, Plaintiff in Error,
vs.
JOHN FREDERICK MAY.

In Error to the Supreme Court of the District of Columbia.

STATEMENT.

This was an action at law brought by John Frederick May, the defendant in error, against Alexander R. Shepherd, the plaintiff in error, to recover a balance due on a promissory note.

The facts disclosed by the bill of exceptions were, in substance, as follows: On April 26th, 1875, May lent Shepherd ten thousand dollars, whereupon Shepherd made and delivered to May a note of that date and amount, payable to his order two years after date, with interest at ten per cent. per annum, payable quarter yearly until paid. To secure the payment of the note Shepherd on the same day conveyed to two trustees, with power to sell, in default of the payment of the note, a certain improved lot in the city of Washington of which he was the owner, and which May at that time believed to be good security for the money lent. This deed of trust provided that, if default was made in the payment of the note or the interest, the trustees should sell the property thereby conveyed, at public sale, on the following terms: "The amount of indebtedness secured by said deed of trust unpaid, with the expenses of sale, in cash, and the balance at twelve and eighteen months, for which the notes of the purchaser, bearing interest from the day of sale . . . shall be taken."

Before the maturity of the note, Shepherd sold the lot to Gilbert C. Walker, and by deed dated August 1st, 1876, for the consideration, as stated in the deed, of thirty thousand dollars, the receipt of which was acknowledged, conveyed the same to him. The deed to Walker was made "subject to a certain deed of trust dated the twenty-sixth day of April, A. D. 1875 . . . for the sum of ten thousand dollars," being the same deed of trust executed by Shepherd to secure his note to May. The deed contained a covenant by Shepherd to defend the premises conveyed against the claim of all persons claiming under the grantor, "save and except the aforesaid deed of trust." Shepherd paid the interest on his note to May as it accrued up to the time of his sale to Walker, and after that time Walker paid the interest until the maturity of the note. When the note fell due, Walker came to May and told him that "he had the note to pay," and asked May to extend the time of payment for one year; and thereupon May extended the note for one year, Walker agreeing to pay interest thereon at the rate specified in the note. Walker paid the interest upon the note for the year, and at the end of that time asked a further extension for another year. May agreed to extend the time of payment for nine months at the same rate of interest, which Walker agreed to pay, but he paid no interest for this period. There is no evidence that Shepherd consented to these extensions of time for the payment of his note.

At the end of the nine months allowed by May to Walker for the payment of the note, upon default made, the property covered by the deed of trust was advertised and sold by the trustees. It was purchased by May for the sum of $8,500, to whom it was conveyed by the trustees by deed dated May 19, 1879. After crediting the note with the net proceeds of sale, May brought suit against Shepherd to recover a balance which he claimed to be due thereon. The jury returned a verdict for May for $3,163.28, on which the court rendered judgment. Shepherd, by the present writ of error, challenges the correctness of that judgment.

Mr. Justice WOODS delivered the opinion of the Court.

The first contention of the plaintiff in error is, that by reason of the transactions

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stated in the bill of exceptions, Walker became the principal debtor of May, and Shepherd became his surety, and as May, upon a valid contract with Walker, extended the time for the payment of the note without the consent of Shepherd the latter was thereby discharged.

The plaintiff in error sought upon the trial to give effect to this contention by asking the court to direct the jury to render a verdict in his favor. The court having refused to do this, the refusal is now assigned for error.

We have under this assignment of error to decide whether, by the mere conveyance of the premises in question to Walker by Shepherd, subject to the incumbrance created by the deed of trust, Walker became bound to May as principal debtor, and Shepherd became his surety. We are of opinion that the conveyance of the premises to Walker did not subject him to any liability to May whatever. To raise such a liability as is contended for by Shepherd there must be words in the deed of conveyance from which, by fair import, an agreement to pay the debt can be inferred. This was expressly held in Elliott v. Sackett, 108 U. S., 132, where Mr. Justice Blatchford, in delivering the judgment of this court, said: "An agreement merely to take land, subject to a specified incumbrance, is not an agreement to assume and pay the incumbrance. The grantee of an equity of redemption, without words in the grant importing in some form that he assumes the payment, does not bind himself personally to pay the debt. There must be words importing that he will pay the debt to make him personally liable." To the same effect see Belmont v. Coman, 22 N. Y., 438; Fisk v. Tolman, 124 Mass., 254; Hay v. Brownshall, 4 C. E. Green, 78; 62 Ill., 546. There are no such words in the deed made by the plaintiff in error to Walker.

Neither is there any other sufficient evidence of any agreement between Walker and Shepherd, whereby the former undertook to pay the debt of the latter to May. The remark made by Walker to May, when he asked to have the time for the payment of the note extended, that "he had it to pay," falls far short of showing any such agreement. As he had bought the property, subject to the incumbrance of the deed of trust, for the consideration of $30,000, which, as appears by the deed to him, he had paid to Shepherd, he might well say that he had the incumbrance to pay without admitting or meaning that he had become personally liable to Shepherd to pay it. His words may be fairly construed to mean that he had the incumbrance to pay or would have to lose the property on which he had already paid $30,000 of the purchase money. But, even if Walker had said to May that he was liable for the debt, his admission would not have been binding on May so as to establish the fact without other proof. And if Walker had expressly promised May to pay the debt, that would not, without the assent of May, have converted Shepherd from a principal debtor into a surety merely. Culla v. Hernandez, 103 U. S., 105; Ray v. Simpson, 22 How., 341. The only way in which Walker could become the principal debtor of May, and Shepherd the surety, was by the mutual agreement of all three. There is no proof of any such agreement. It follows that, as the relation of principal and surety did not exist between Walker and Shepherd, the latter was not discharged from his liability to May by the contract of May with Walker to extend the time for the payment of the money due on Shepherd's note. But even if it had been shown that Shepherd had become the surety of Walker it was incumbent on the former to show, as a part of his defence, that the indulgence given by May to Walker was without his assent. Sprigg v. Bank of Mount Pleasant, 14 Pet., 201; Bangs v. Strong, 7 Hill, 250 (S. C. 42 Am. Dec., 64); Cox v. Mobile, etc., R. R. Co., 37 Ala. 323. There was no proof of want of assent. The defence therefore failed.

It is next contended by the plaintiff in error that May is estopped to deny that the note sued on is not paid in full, because the deed of conveyance made to him by the trustees recites that the property was sold to him in accordance with the terms of the deed of trust, and the deed of trust declared that the terms of sale should be the amount due on the note of Shepherd, and the expenses of sale in cash, and the balance on a credit of twelve and eighteen months. This contention is based on the theory that the clause of the deed of trust executed by Shepherd prescribing the terms of sale, and which merely showed his expectation that the property would bring, at least, the amount of the note and expenses of sale, estopped May from denying that the property would, and actually did, bring that amount. There is no estoppel. The proposition amounts to this: that when a mortgagor represents to his mortgagee that the property mortgaged is sufficient security for the debt, and the mortgagee, relying upon the representation, accepts the security, and it turns out that the proceeds of the mortgaged property are insufficient to pay the debt, he is estopped to deny that his debt is paid. The statement of the proposition is its an-

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swer. The authorities referred to upon this contention (Fitch v. Borden, 17 Johns., 161; Freeman v. Auld, 44 N. Y., 50; Dunden v. Hitchcock, 12 How., 256; Henry County v. Winnebago Drain Co., 52 Lees., 454), by counsel for Shepherc are cited to sustain the proposition, that a person who accepts a deed of conveyance is estopped to deny recitals therein contained. But as there is no recital in the deed that May had agreed that the property should bring a sum sufficient to pay his note, he is not estopped to deny that the note is paid.

Judgment affirmed.

Supreme Court Pennsylvania.

MARR *vs.* MARR.

1. A confessed judgment, given for the amount agreed to be due upon a settlement of accounts by the parties, will be opened in order that the defendant may set up the defence of usury.
2. The fact that usury has been paid voluntarily, and the settlement made upon that basis does not impair the defendant's position.
3. If a contract is usurious, the defence may be made as effectually against any notes or other instruments given in place of the original as against the original itself.

PAXSON, J.—When this case was here before (see Marr v. Marr, 7 Out., 463) it was reversed principally upon the ground that the report of the referee did not conform to the act of assembly. Among other defects, there was no statement of facts and conclusions of law separately as required by said act. We might well reverse the case now and send it back for the same reason. The statement of facts and conclusions of law, so far as they have been found at all, are blended together, are not easily separated, and are very far from a compliance with the law. As, however, there appears to have been an attempt at such compliance, we will endeavor to make the best of it and dispose of the case as it stands.

The referee has not found that the contract between the parties was usurious, yet the facts which he reports conclusively show it to be so. The defendant below was engaged in banking, and the loans made to him or his firm by William H. Marr were to assist him in carrying on that business. They were made at an admittedly high rate of interest, usually 15 per cent. These transactions were continued several years, and ended in an alleged settlement between William H. Marr and William A. Marr, as attorney for the defendant, on July 12, 1876, by which the said William H. Marr agreed to take $8,000 in full of all demands.

The defendant, however, repudiated the settlement, alleging that he did not owe the money, and that his attorney exceeded his authority. There had been a previous settlement on January 1, 1875, when defendant gave William H. Marr a judgment note for $1,203.17, subject to the correction of any error. This judgment note appears to have been retained by William H. Marr after the settlement of July 12, 1876, and contains an endorsement that it was held as collateral for the "enforcement of the agreement of July 12, 1876." This judgment note was subsequently assigned to Frank G. Marr, and execution issued thereon for $8,000 and interest. The court below, upon the application of the defendant, opened the judgment and let him into a defence when the case was referred to the present referee.

We have not recited, nor is it necessary, all the previous dealings between the parties, and settlements and attempts at settlements, and the various notes given by the defendant at different times. The claim that is left is the residuum of all these transactions, and the serious question in the case is, whether the judgment, as it now stands, is tainted with usury.

The master thought that the defence of usury was not available because the defendant had voluntarily paid more than six per cent., and had settled with William H. Marr upon that basis. The authorities, however, do not sustain this position. The payment of usurious interest is usually voluntary, at least so far as a payment can be called voluntary which is the result of a sort of moral coercion, and of that particular kind of influence which an exacting usurer exercises over his unfortunate victim so long as he has money to pay with or credit to lose.

It is only when a debtor is driven to the wall that he sets up his defence of usury, and if it would not avail where the payments were voluntary, it could not often be successfully invoked. There is no merit in this position. The principle to be deduced from our own authorities is that the excess of interest paid over six per cent. is the money of the borrower, which, when received by the creditor, he cannot retain, but holds for the use of the debtor. Heath v. Page, 13 P. F. Sm., 108. In the recent case of Earnest v. Hopkins, 41 Les. Int., 346, it was said by our brother Trunkey: "The borrower is not bound to pay any interest in excess of six per cent. per annum, though he may have contracted to pay a greater rate. Any security given in payment or discharge of a usurious contract is equally void with that. The original taint attaches to all consecutive obligations grow-

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ing out of the original usurious transaction, and none of the descendants' obligation can be free from it, if the descent can be traced. This principle was settled under statutes which totally avoided the contract. Under the act of 1858, the money loaned, with lawful interest, is a valid debt, and only the excess of interest can be avoided, but that affects only the extent of the application of the principle." Citing Campbell v. Sloan, 62 Penn., 481; Overholt v. The Bank, 82 Penn., 490. It is useless to multiply authorities upon so plain a proposition.

We are of opinion that the alleged settlements are no bar, and do not conclude the defendant. The money overpaid as interest is a payment on account of principal, and if both principal and interest have been paid, the excess of interest may be recovered back in a count for money had and received. The act of 28th of May, 1858, detaches the excess of interest from the debt, and is recoverable by the debtor in *assumpsit*. Heath v. Page, *supra*. That a judgment was confessed for the amount supposed or claimed to be due is not material where such a judgment is made part of the usury; the courts will open it and afford relief. Wood's Appeal, 11 W. N. C., 30. It is not the case of a judgment recovered for usurious interest, and afterwards paid and satisfied. Such was the case of Hopkins v. West, 2 Norris, 410, and Montague v. McDowell, 3 Out., 265, cited by defendants in error. There was nothing of this kind here. There was a change of notes from time to time, taking up and renewing, but the taint of the usury runs through it all. In Campbell v. Sloan, 12 P. F. S., it was said by Sharswood, J., at page 485: "It can hardly be supposed, said Parker, C. J., in Bridge v. Hubbard, 15 Mass., 96, that an usurious lender of money can screen himself from the effect of the law by giving up the security originally taken and substituting another in its place. If this can be done, much ingenuity is not required to evade and defeat the statute."

What we have said covers such of the assignments of error as relate to the question of usury. We notice nothing in the remaining assignments that needs correction. But, for the reasons given, the judgment must be reversed, and the case sent back to the referee with instructions to credit the defendant with all interest paid in excess of six per cent.

The judgment is reversed and a *procedendo* awarded.

THERE are, in the various German universities, 157 professors between the ages of seventy and ninety.

NOTES OF RECENT DECISIONS.

Married Woman: Separate Industry; When Estopped to Say that Her Property is that of Her Husband.—A chief object of the laws authorizing the wife to obtain a judicial separation of property is to emancipate not only her property but her industry from control of her embarrassed husband, and from liability for his debts; to enable her to conduct business in her own name and for her own account and benefit, and thus to earn a livelihood for herself and family. When she thus conducts business in her own name and ostensibly for her own account, and induces innocent third persons to contract with her upon the faith of her own and her husband's representations that the business is her own, she cannot afterward repudiate her obligations on the pretence that the business was really that of her husband, in opposition not only to her representations, but to all the ostensible appearances of its conduct. Having thus represented and held out the business as her own by conducting it in her own name through a series of years, as well as by her express assurances, the doctrine of estoppel fully applies. [Chaffe v. Watts, S. C. La., March 30, 1885.]

Mortgage: Confiscated Property; Rights of Mortgagee; Parties to Foreclosure Proceedings; Title of Purchaser.—A mortgagee of property which was confiscated subsequently to the mortgage and judgment of condemnation had upon it, under the laws of the United States, has, notwithstanding such judgment of condemnation, a valid subsisting mortgage, superior to any estate in the mortgaged property acquired by the judgment of condemnation, or which could be acquired by a sale made by virtue thereof; and a decree of foreclosure, and a sale under such decree, will carry to the purchaser the entire estate in the mortgaged premises, provided the necessary parties were made to the foreclosure proceedings. [Avegno v. Schmidt, S. C. U. S., Jan. 26, 1885. 5 S. C. Rep., 487.]

Conspiracy to Obtain Lease; Pleading; Cancellation.—The complaint charged with particularity of detail, that the defendants formed a conspiracy to cheat and defraud the plaintiff, by inducing him to accept a lease of certain land from one of them; that they carried out such conspiracy by false and fraudulent representations, which imposed upon the plaintiff, and that plaintiff has been damaged thereby. *Held*, upon a review of the averments of the complaint, that a good cause of action was stated, entitling him to a cancellation of the lease. [Davis v. McGrew et al.; Sup. Court of Cal.]

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The Courts

U. S. Supreme Court Proceedings.

DEC. 7, 1885.

James E. Webb, of Birmingham, Ala.; Hannis Taylor, of Mobile, Ala; John Flournoy, of St. Louis, Mo., and David Fales, of Chicago, Ill., were admitted to practice.

Nos. 875 and 876. D. M. Ferry & Co. v. William Livingston, jr., collector, etc.; William Livingston, jr., collector, etc., v. D. M. Ferry & Co; judgment affirmed. Opinion by Mr. Justice Blatchford.

No. 887. Bernhard Arnson et al. v. Thomas Murphy, late collector, etc.; judgment affirmed with costs. Opinion by Mr Justice Blatchford.

No. 913. Charles C. Harrison et al. v. Edwin A. Merrit, collector, etc; judgment affirmed with costs. Opinion by Mr. Justice Blatchford.

No. 49. The Davis Sewing Machine Company, etc., v. A. C. Richhards et al., executors, etc. Opinion by Mr. Justice Gray.

No. 64. Herman R. Baitzer et al. v. Raleigh & Augusta Air Line Railroad Company et al.; decree affirmed with costs. Opinion by Mr. Justice Woods.

No. 18. The New Orleans Gas Light Company v. The Louisiana Light and Heat Producing and Manufacturing Company et al.; decree reversed with costs. Opinion by Mr. Justice Harlan.

No. 539. The New Orleans Water Works Company v. Robert C. Rivers; decree rev rsed with costs. Opinion by Mr. Justice Harlan.

No. 489. The Louisville Gas Company v. The Citizens' Gas Light Company; decree reversed with costs. Opinion by Mr. Justice Harlan.

No. 47. Jacob P. Effinger v. James Kenney, trustee, etc.; decree reversed with costs. Opinion by Mr. Justice Field.

No. 216. James Kenney, trustee, v. Jacob P. Effinger; dismissed with costs. Opinion by Mr. Justice Field.

No. 690. The Northern Pacific Railroad Company v. I. L Rockne, county treasurer, etc.; decree reversed with costs. Opinion by Mr. Justice Miller.

No. 27. Moina Campbell, administratrix, etc., et al. v. James H. Holt; judgment affirmed with costs. Opinion by Mr. Justice Miller.

No. 24. Pullman's Palace Car Company v. The Missouri Pacific Railway ompany et al.; decree affirmed with costs. Opinion by Mr. Chief Justice Wa te.

No. 66. Clay County, Iowa, v. The United States, ex rel. Hugh McAleer, sr and jr., administrators, etc; judgment reversed with costs. Opinion by Mr. Chief Justice Waite.

No. 1168. George A. Bowman et al. v The Chicago & Northwestern Railway Company; dismissed for the want of jurisdiction. Opinion by Mr. Chief Justice Waite.

No. 1008. William S. Hassall, trustee, v. A. W. Wilcox et al.; dismissed.

No. 931. Mathias Simmerman v. The State of Nebraska; dismissed for the want of jurisdiction. Opinion by Mr. Chief Justice Waite.

No. 939. Adolph Lewisohn et al. v. William McDermott et al., dismissed.

No. 555. Robert C. Hewitt v. Lewis S. Filbert et al.; motion to dismiss submitted.

No. 422. A. S. Core et al. v. John F. Vinal; advanced under thirty-second rule.

No. 922. The Oregon Railway & Navigation Company v. The Oregonian Railway Company (limited); motion to advance submitted.

No. 84. Joseph H. Field v. Oliver de Comeau et al.; submitted.

No. 1934. The Union Pacific Railroad Company v. The United States; argument commenced.

No. 668. The Western Union Telegraph Company v. George F. Hall; motion to dismiss submitted.

No. 1061 The Minneapolis & St. Louis Railway Company v. Oliver Beckwith; motion to dismiss submitted.

DEC. 8, 1885.

Wm. P. Fiero, of New York city; Charles Albert Prince, of Boston, Mass.; Frederick I. Allen, of Auburn, N. Y. and Neill Dumont, of Washington, D. C., were admitted to practice.

No. 86 John F. Coyle v. Henry S. Davis et al.; cause ordered for argument after No. 87.

No. 1230. Varnum Westcott et al., etc., v. John F. Miller; docketed and dismissed with costs.

No. 999 Brooke Mackall, jr., v. Alfred Richards et al.; motion to dismiss submitted.

No. 1142. Susie M. Kerr et al. v. The South Park Commissioners; argued

No. 90. Daniel McClure v. The United States; argued.

No. 87. The Northern Pacific Railroad Company v. Clayton D. Herber; argument continued.

DEC. 9, 1885.

John E Abbott, of Boston, Mass.; Francis J. Wing, of Cleveland, O., and Orlando W. Wright, of Detroit, Mich., were admitted to practice.

No. 87. The Northern Pacific Railroad Company v. Clayton D. Herbert; argument concluded.

No. 86. John F. Coyle v. Henry S. Davis et al.; argued.

DEC. 10, 1885.

Sames H. Taylor, of Washington, D. C.; J. W. Baker and S. A. Champion, of Nashville, Tenn., and Samuel B. Griffith, of Mercer, P., were admitted to practice.

No. 191. The Lamville County National Bank v. D. Willard Dudley; dismissed per stipulation.

Nos 88 and 89. James C. Jones et al. v. Benjamin F. Simpson; James C. Jones et al. v. George Holsington; submitted.

No. 90. Daniel McClure v. The United States; passed.

No. 91. A. G. Coffey, claimant, etc., v. The United States; argued and submitted.

No. 92. John W. Coffey, claimant, etc., v. The United Ssates; argued and submitted.

No. 95. The Port of Mobile v. Henry Watson;

No. 94. The Port of Mobile v. The United States, ex rel. Aenry Watson; argument commenced.

DEC. 11, 1885.

No. 841. The Southern Pacific Railroad Company v. The People of the State of California; submitted under the twentieth rule.

No. 93. The Port of Mobile v Henry Watson;

No. 94. The Port of Mobile v. The United States, ex rel. Henry Watson; argument concluded.

No. 1145. Jas. A. Smith v. William C. Whitney, Secretary of the Interior; argued.

No 844 The United States v. Morris Speigel; submitted.

No. 983 Edward A. Boyd et al. v. The United States; argument commenced.

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SUPREME COURT OF THE DISTRICT OF COLUMBIA

GENERAL TERM.

Dec. 7, 1885.

Application of Arthur S. Brown for admission to the bar. Referred to committee.

M. A. Downing appointed examiner in chancery.

IN EQUITY.—New Suits.

Dec. 1, 1885

9725 Zody Strasburger v. Hosea B. Moulton. To correct mistake and for cancellation of receipt. Com sol, W. J Newton.

Dec. 2, 1882.

9726. John T. Ford v. Daniel Herzog. Injunction. Com sol, A. J. Carr.

9727 Milton G. Barlow et al. v. James Adams Injunction. Com sols Shellabarger & Wilson.

Dec. 3, 1885.

9728. Marion V. Julien v. Philip A. Julien. For divorce. Com sol, A. B. Williams.

9729 Amelia V. Hamilton v. Wm. N. Graham's unknown heirs. Com sol, J. J, Weed.

Dec. 5, 1885.

9730. Robert Ball v. John M. Langley et al. Maintenance and education. Com sol, George E Harris.

Dec. 7, 1885

9731. Charles F. Wollard v. Mary E. Wollard et al. Com sol, D. W. Glassie.

Dec. 8, 1885.

9732. Wm. E. Burford v. Lewis A. Walker et al. To sell lot 28, square 220. Com sols, Birney & Birney.

Dec. 9, 1885.

9733. Maggie C. M. Thompson, alleged lunatic. Upon petition of F. G. Thompson, de lunatico inquirendo. Com sol, J. G Bigelow.

9734. Oliver C. Black v. Harriet B. Black, For divorce. Com sol, F. T. Browning.

CIRCUIT COURT.—New Suits at Law

Dec. 2, 1885

26526. Alice A. Peddicorde v. Honora Rooche. Notes, $365. Piffs atty, John E. Norris.

26528. Alpheus R. Appleman v Alexander M. Brandt. Notes, $676.18. Piffs attys, Worthington & Heald.

26528. Jacob Tome v. Same. Note, $500. Piff attys, Same.

26529. Same. Note, $461. Piffs attys, Same

26530- Wm. Muehleisen v. John T. Power. Note, $96.12 Piffs atty, W. J. Newton.

Dec. 3, 1885.

26531. Wm. Mayse v. Lewis A. Walker. Note, $320. Piffs atty Jas F. Hood

26532 David D Cummins v. Stewart Van Vliet Breach of covenant of warrantee, $16,311 49. Piffs attys, Dobbyns and Edwards & Barnard.

Dec 4, 1885

26533. John T. Winter v. John M. Keating Note, $625. Piffs atty, H. B. Moulton.

76534 Nellie A. Burgess v. John T. Burch. Notes, $531.75. Piffs atty, Ewell A. Dick.

Dec 5, 1885.

26535 George S. Prindle v. Robert G Campbell Damages, $20,000. Piffs atty, Worthington & Heald

26536. August Wertz v. Wm. E. Hodge et al. Notes, $200. Piffs attys, Webb and Wright.

26537. Curtis & Wheeler v. Louis Heilbrun. Notes and acct., $1391.75. Piffs atty, I. G. Kimball.

PROBATE COURT.—Justice Hagner.

Dec. 11, 1885.

In re Catharine E. Hayseman. Answer of E. A. McIntyre to citation to show cause why letters of guardianship should not be revoked filed.

Estate of Ernest Loefler. Executor ordered to receipt for certain money.

In re Edith B. Hunt et al., minors. Order appointing E J. Pattee guardian, bond, $1,200

Estate of James L. Wollard. Order allowing counsel fees.

Estate of Joseph L. Savage. Firs andt final accounts of administrator filed.

Estate of G H. Schley. Order of court authorizing the distribution of of personal property.

Estate of Joseph Steinberger. Order to sell stock and merchandise at private sale.

Estate of Charles Petiflis Letters of administration issued to George Cowie. Bond, $2,000.

In re Dorothea C. Muhlhausen, minor. Order appointing August Getz guardian Bond, $200..

Estate of A. K. Long Order of publication issued and Elizabeth F Long appointed guardian of the orphan children. Bond, $500.

Estate of Timothy Sands. Letters of collection issued to B. H. Warner. Bond, $5,000.

JAMES L. ANDEM,

STENOGRAPHER, U. S. COMMISSIONER,

EXAMINER IN CHANCERY,

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court business, December 11, 1885.

In the case of Bertha Schwartz, Executrix of Joseph Schwartz, deceased, the Executrix aforesaid has, with the approval of the Court, appointed Friday, the 29th day of January, A D. 1886, at 11 o'clock, a. m., for making payment and distribution under the Court's direction and control; when and where creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized with their claims against the estate properly vouched: otherwise the Executrix will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 50 H J. RAMSDELL, Register of Wills

ANSON S. TAYLOR, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. December 11, 1885.

In the matter of the Estate of Andrew K. Long, late of the U S. Navy, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Elizabeth Foster Long.

All persons interested are hereby notified to appear in this Court on Friday, the 8th day of January next at 11 o'clock a. m., to show cause why Letters of Administration on the Estate of the said deceased should not issue as prayed. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B HAGNER, Justice.

Test: 50 H. J. RAMSDELL, Register of Wills.

SAMUEL B. GRIFFITH, Solicitor.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Francis P. Hughes, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 8th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of December, 1885.

50 JENNIE A. HUGHES,

EDWARDS & BARNARD Solicitors. Administratrix

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Sitting in Equity. December 2. 1885.

FRANCIS F. BUTLER et al
v
MARY ANN BUTLER et al, } 9687. Eq. Doc. 25.

Edward J. Stellwagen, trustee appointed by decree of this Court in the above-entitled cause to sell the real estate in said proceedings described, to wit: sub-lot 3, in square numbered one hundred and sixty-three (163), in the City of Washington, District of Columbia, having reported to the Court that, after complying with the requirements of said decree, he offered for sale at public auction the aforesaid property on the 30th day of November, A D. 1885, and that Titian J. Coffey and Mary Ker Coffey, of the said City of Washington, became the purchasers thereof, at and for the sum of $8,245 00,

It is, by the Court, on the 2d day of December, A D. 1885, ordered that said sale be, and the same is, hereby ratified and confirmed, unless cause to the contrary be shown on or before the 2d day of January, A D. 1886.

Provided, a copy of this order be published in the Washington Law Reporter once a week for three weeks before said 2d day of January, A D 1886.

A. B. HAGNER.

A true copy. Test: 49 R. J. MEIGS, Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 9th day of December, 1885.

FRANK D. SIMMONS, TRUSTEE. v. JOSHUA HILL. } No. 26,545. At Law.

On motion of the plaintiff, by Mr. Kimball his attorney, it is ordered that the defendant, Joshua Hill, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day, otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.
A true copy. Test: 50 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Adaline McIntyre, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of December next; they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 11th day of December, 1885.

EDWIN A. McINTIRE.
50 Executor, 918 F Street, N. W.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Alfred Edelin, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of November, 1885.

ARTHUR A. BIRNEY,
50 Administrator

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 10th day of December, 1885

MARION V. JULIEN v. PHILIP A. JULIEN. } No. 9728 Eq Doc. 25.

Application for divorce on the ground of desertion.

On motion of the plaintiff, by Mr A B. Williams, her solicitor, it is ordered that the defendant, Philip A Julien, cause his appearance to be entered herein on or before the first rule day, occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A B HAGNER, Justice.
A true copy. 50 Test: R. J MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 10th day of December, 1885.

SUSAN G. CARTER v. CHARLES R PLUMBE. } No. 26 521. At Law.

On motion of the plaintiff, by Mr Dean, her attorney, it is ordered that the defendant, Charles R. Plumbe, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. W S. COX, Justice.
True copy. Test: 50 R J MEIGS, Clerk

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

MARY J. YOUNG, By her next friend, v JANE HART et al } Equity. No 9694.

The trustee, Samuel Maddox, having reported to the Court that he has sold the real estate in the proceedings in this cause mentioned, to wit: part of lot 7 in square 975, on the ground plan of the City of Washington, in said District, to Jane Hart, at and for the sum $1450, and that said purchaser has fully complied with the terms of sale:

It is, thereupon, this 11th day day of December, A D. 1885, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 11th day of January, A D 1886.

Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to said last named day.

By the Court: A. B. HAGNER, Justice, &c.
True copy. Test: 50 R. J. MEIGS, Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court business December 5th, 1885.

In the case of Job Barnard, Administrator of Isaac Cross, deceased, the Administrator aforesaid has, with the approval of the Court appointed Friday, the 8th day of January A D. 1886, at 11 o'clock, a m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

Test: 49 H. J RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business December 2, 1885.

In the case of Calderon Carlisle, Administrator of Davis Richards, dec'd, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 8th day of January, A D 1886, at 11 o'clock a m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

Test 49 H J. RAMSDELL, Register of Wills.
No. 1740. A. D., 11.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

ANDERSON et al v. ANDERSON et al. } Equity. No 9620.

Watson J. Newton, the trustee in the above entitled cause, having reported that he has received an offer of $925 for the real estate in the proceedings set out, from Frank M Green. It is this 5th day of December, 1885, ordered that the offer be accepted and that the sale to the said Frank M. Green, be and is hereby ratified and confirmed unless cause to the contrary be shown on or before the 5th day of January, A D. 1886.

Provided a copy of this order be published once a week for three successive weeks in the Washington Law Reporter and in the Evening Star before said last date.

By the Court. A. B. HAGNER.
A true copy. Test: 49 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of Washington, D. C., has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Emeline M. Morse, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of December next; they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 5th day of December, 1885.

49 ALICE H. MORSE, Administratrix.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Holding a Special Term for Orphans' Court Business. December 4th, 1885.

In the matter of the Will of Timothy Sands, late of the District of Columbia, deceased.

Application for the probate of the last Will and Testament of said deceased, dated October 27th, 1885, and for Letters Testamentary on the Estate of the said deceased, has this day been made by John D. Croissant and Mary E. Davis, two of the Executors

All persons interested are hereby notified to appear in this court on Friday, the 8th day of January next at 11 o'clock a m. to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B. HAGNER, Justice.
Test: 49 H. J RAMSDELL, Register of Wills.
WM. A. COOK, Solicitor.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 1st day of December, 1885.

JULIA E. CALLAHAN v. FRANCIS R. CALLAHAN. } No. 9724. Equity Docket, 25.

Application for divorce on the ground of adultery and desertion

On motion of the plaintiff, by Mr. Daniel E Cahill, her solicitor, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.

True copy. Test: 49 R. J MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 4th day of December, 1885.

AMELIA V. HAMILTON v. The UNKNOWN HEIRS of WILLIAM N. GRAHAM, dec'd. } No. 9729. Eq Doc. 26

On motion of the plaintiff, by Mr. John J. Weed, her solicitor, it is ordered that the defendants, the unknown heirs of William N. Graham, deceased, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.

A true copy. Test: 49 R J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration on the personal estate of Guynilda H. Schley, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of December, 1885.

49 CHARLES L. DU BOIS, 605 7th St, N. W.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Sitting in Equity. December 1, 1885.

ANN BEAN et al. v. JOSEPH HYMER et al. } 1224. Eq. Doc. 8.

Upon consideration of the report of A. Thomas Bradley, trustee, filed herein, it is by the Court this 1st day of December, A. D 1885, ordered and decreed that the offer of John F. Donohue to purchase lot five in square seven hundred and seventy, as stated in said report, be hereby accepted, and that the sale of said lot to him be ratified and confirmed unless cause to the contrary be shown on or before the 1st day of January, 1885.

Provided a copy of this order be inserted in the Washington, Law Reporter, once a week for three successive weeks before said last mentioned day.

A. B. HAGNER.

True copy Test: 49 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Ignacio Montalvo y Calvo, late of Paris, France, deceased

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 2d day of December, next; they may otherwise by law be excluded from all benefit of the said estate,

Given under my hand this 2d day of December, 1885.

B. F LEIGHTON,

49 Administrator.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Marquis Jose de Campo, late of Madrid, Spain, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 3d day of December next; they may otherwise by law be excluded from all benefit of the said estate,

Given under my hand this 3d day of December, 1885.

B. F. LEIGHTON,

E. E. HOLMAN, Solicitor. 49 Administrator.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Rosa A Scull, late of Havana, Cuba, deceased

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 2d day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of December, 1885.

49 B. F. LEIGHTON, Administrator.

THIS IS TO GIVE NOTICE

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Jose Suarez Argudin, late of Havana, Cuba, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of December, 1885,

49 B. F. LEIGHTON, Administrator.

THIS IS TO GIVE NOTICE

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters of Administration on the personal estate of Conde de San Fernando de Penalver, late of Havana, Cuba, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 2d day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of December, 1885.

49 B. F. LEIGHTON, Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. December 2d, 1885.

In the case of Samuel H. Walker, Adm'r of Wm T Hook, dec'd, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 8th day of January, A. D 1886, at 11 o'clock a m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 49 H. J. RAMSDELL, Register of Wills.

No. 1718. A. D, 11.

A. B. DUVALL Solicitor.

THIS IS TO GIVE NOTICE

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Barbara Koch, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 5th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of December, 1885.

49 GEO. C. WALKER.

SIMON WOLF, Solicitor. Executor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration on the personal estate of Joseph H Herron, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of December, 1885.

49 J. WHITLEY HERRON,

GEO. F: GRAHAM, Solicitor. Star Office.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term in Equity.

MARY R. SQUIRES et al.
v.
JOHN F GARNER et al. } 9551. Equity docket 25.

E. H Thomas and Henry Wise Garnett, trustees in the above-entitled cause, having reported the sale of the property mentioned in these proceedings, being sub-lot thirty (30) in square four hundred (400), to W. P. H Crews, for forty-six hundred dollars ($4,600.00), and that the purchaser has complied with terms of sale and offers to pay all the purchase-money in cash:

It is, this 17th day of November, A D. 1885, ordered, that the said sale be, and the same hereby is, confirmed and ratified, and the purchaser have leave to pay all the purchase-money in cash, unless cause to the contrary be shown on or before the 17th day of December next.

Provided that a copy of this order be published in the Washington Law Reporter once a week for three (3) successive weeks prior to the said day last mentioned.

A. B. HAGNER.

True Copy Test: 47 R. J. MEIGS, Clerk

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Louis Simon, late of Western Terrace, Nottingham, County of Nottingham, England deceased,

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of November, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of November, 1885.

48 CHARLES E. FOSTER,

WM. G. HENDERSON, Solicitor Administrator.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Joseph Steinberger, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of November, 1885.

48 TENIA STEINBERGER,

LEON TOBRINER, Solicitor Administratrix

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 21st day of November, 1885.

JOHN G LEE
v.
WILLIAM P LEE et al. } No. 9659. Equity Docket, 25.

On motion of the plaintiff, by Mr. Chapin Brown, his solicitor, it is, this 21st day of November, A. D 1885. ordered that the defendant William P. Lee, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A B. HAGNER, Justice.

True copy. Test: 47 R. J MEIGS, Clerk.

THIS IS TO GIVE NOTICE

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration d b n.c t a, on the personal estate of Benjamin Alvord late of the District of Columbia, decd.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber, on or before the 20th day of November next, they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 20th day of November, 1885.

47 BENJ ALVORD

GEO E. HAMILTON, Solicitor. Administrator d.b n.c t.a

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Emily L. Alvord, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 20th day of November next; they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 20th day of November, 1885.

47 BENJ. ALVORD,

GEO. E. HAMILTON, Solicitor. Executor.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia. November 14, 1885.

JAMES A. THOMAS et al.
v
ARTHUR F. THOMAS et al. } 9565. Eq. Doc. 25.

This cause coming on to be heard upon the report of the trustee filed herein on the 14th day of November, A. D. 1885 it is, this 14th day of November, A. D 1885. by the Court, ordered, adjudged and decreed, that the sale of the real estate mentioned in the bill filed herein to Mary Clarke, reported by the the trustee, Chapin Brown, in the report above named, be and the same is hereby ratified and confirmed unless cause to the contrary be shown on or before the 14th day of December, A. D 1885.

Provided a copy of this order be published once a week for three successive weeks in the Washington Law Reporter previous to said 14th day of December, A. D 1885.

A. B HAGNER.

A true copy Test: 47 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscribers of the District of Columbia have obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Benedict Milburn, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscribers on or before the 13th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 13th day of November, 1885.

WM. G. HENDERSON,
WM. F. MATTINGLY,

47 Administrators.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of John Brent, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 16th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of November, 1885.

WILLIAM L. FREEMAN,

A. K. BROWNE, Solicitor 47 Executor.

THIS IS TO GIVE NOTICE:

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John F. Hanna, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of November next: they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of November, 1885.

E. CECELIA HANNA,

JAS. M. JOHNSTON, Solicitor 47 Administratrix.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Manuel J. Gonzales, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 30th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of November, 1885.

CHARLES W. HENSHAW,

H. B. MOULTON, Solicitor. 49 Executor.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Adminstration on the personal estate of Conde de Gibacoa, late of Havana, Cuba, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of December, 1885.

49 B. F. LEIGHTON

Administrator.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

NELLIE F. PUMPHREY et al. v. ELIZABETH A. PUMPHREY et al. } 9410. Eq. Doc. 24

The trustees in the above-entitled cause, having reported that they have made sale of original lot 40, and lots 55 to 62, both inclusive, of their subdivision of original lots 41 and 42, in square No 503, in the City of Washington, D C, at prices aggregating $7,559.63, and upon the terms fixed by the decree of sale, and the said trustees having further reported an offer at private sale of $328.78, received by them for lot 1, in square south of square south of square 667, in said City, in accordance with said terms:

It is, by the Court, this 27th day of November, A. D. 1885, ordered, that the said sales made, be ratified and confirmed, and also that the said trustees be, and they hereby are authorized to accept said offer for lot 1, in square south of square south of square 667, at private sale, unless cause to the contrary hereof be shown on or before the 27th day of December, 1885.

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said last-mentioned date.

A. B. HAGNER.

A true copy. 48 Test: R. J. MEIGS, Clerk

THIS IS TO GIVE NOTICE,

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Wm Wallace Greenfield late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 22d day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of October, 1885

E EMMA GREENFIELD,

GORDON & GORDON, Solicitors. 48 Executrix.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business. November 27th, 1885

In the case of Thomas J. Myers, Administrator of Frances Blanchard, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 18th day of December, A. D 1885, at 11 o'clock, a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 48 H. J. RAMSDELL, Register of Wills

CARUSI & MILLER, Solicitors.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 25th day of November, 1885.

REBECCA H. HILL and THE CONNECTICUT GENERAL LIFE INSURANCE COMPANY, v. JOHN C. TEN EYCK, MARY TEN EYCK, JULIA TEN EYCK, JANIE SAUNDERS and JULIA HILLHOUSE. } No. 9720. Equity Docket, 25.

On motion of the plaintiffs, by Messrs Charles D Fowler and Samuel R. Bond, their solicitors, it is ordered that the defendants, John C, Ten Eyck, Mary Ten Eyck, Julia Ten Eyck, Janie Saunders and Julia Hillhouse, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.

A true copy. Test: 48 R J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 25th day of November, 1885.

SARAH SNOWDEN v. H. CLAY JOHNSON et al. } No. 9716. In Equity.

On motion of the plaintiffs, by Mr. Neal T. Murray, her solicitor, it is ordered that the defendants, A. Howard Johnson and Ella V. Hickman, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.

A true copy. 48 Test: R. J. MEIGS, Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

ANNA ELIZA BARNARD et al v. WILLIAM RUSSELL WHITING et al. } 9537, Eq. Doc. 25

Randolph Coyle the trustee in the above-entitled cause, having this day reported to the Court the sale by him on the twenty-first instant of the real estate involved in this cause, to John R. McLean, at and for the price of $22,000.00 to be paid in cash upon the final ratification of the sale by the Court, without interest:

It is, by the Court, this 23d day of November, A. D. 1885 ordered that the sale so reported be, and the same hereby is, ratified and confirmed, unless cause to the contrary thereof be shown on or before the 23d day of December, A D 1885.

Provided, that a copy of this order be published in the Washington Law Reporter, once a week for three successive weeks before said last-mentioned date

A. B. HAGNER.

A true copy. Test: 48 R. J MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. November 27th, 1885.

In the case of George W. Brown, Adm'r of Maurice N. Grossmann, deceased, the Adm'r aforesaid has, with the approval of the court, appointed Friday, the 18th day of December A. D. 1885, at 11 o'clock a. m, for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 48 H. J. RAMSDELL, Register of Wills

HENRY WISE GARNETT, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, November 27th, 1885.

In the matter of the Estate of Cornelius Donovan, late of the District of Columbia, deceased

Application for Letters of Administration on the Estate of the said deceased has this day been made by Richard T. Donovan, who prays that said letters may be granted to Matthew G. Emery, jr

All persons interested are hereby notified to appear in this court on Friday, the 18th day of December next, at 11 o'clock a m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: 48 H. J RAMSDELL, Register of Wills

W. K. DU HAMEL, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 28th day of November, 1885.

EDMUND FITZGERALD v. MATILDA GRAHAM et al. } No. 9502. Eq. Doc 25.

On motion of the plaintiff, by Messrs Hine & Thomas, his solicitors, it is ordered that the defendant, Sarah Graham, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise this cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.

True copy. Test: 48 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Wm. Pinkney Brooks, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of November, 1885.

48 WM. E. CLARK.

GORDON & GORDN, Solicitors. Administrator.

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Washington Law Reporter

WASHINGTON - - - - - December 19, 1885.

GEORGE B. CORKHILL - - - EDITOR

Hon. Richard T. Merrick.

A meeting of the bar of the United States Supreme Court was held on the 14th inst., in the chamber of that court, to "express their profound sense of the loss they have sustained in the death of Hon. Richard T. Merrick, and to bear their testimony to the public and private virtues which marked his distinguished career."

There was a large attendance. Senator Edmunds was chosen chairman, and Mr. James H. McKenney secretary. Messrs. J. Randolph Tucker, A. R. Lawton, Robert S. Green, John W. Daniel, William A. Maury, J. Hubley Ashton and A. Porter Morse were appointed a committee on resolutions.

The resolutions reported and adopted declared that in the death of Mr. Merrick the bar had been deprived of association with one who was a gifted and brilliant advocate, an able, laborious and learned lawyer, and a conscientious and wise counsellor; that his spotless character, his bold and fearless discharge of forensic duty, his devotion to his country and its free institutions, and his fidelity in all other relations of life commanded public esteem and confidence and deserve to be commemorated by the profession.

In conclusion the resolutions tendered sincere sympathies to the orphan children of the deceased, and it was provided that an engrossed copy should be sent to the family; also that the Attorney-General submit the proceedings to the Supreme Court. Senator Edmunds, Representative J. Randolph Tucker, Secretay Bayard, Hon. Geo. Ticknor Curtis and Gen. A. R. Lawton dellvered eulogistic remarks. Secretary Bayard paid a high tribute to the speech delivered by Mr. Merrick before the electoral commission. The resolutions were unanimously adopted and the meeting adjourned.

IN A recent letter to the editor of the *Albany Law Journal*, Lord Coleridge, in referring to the criticisms of the press on the reception given Chief Justice Waite on his late visit to England, says: "I was sorry to see from the *Albany Law Journal* that several of our papers have found fault with the reception of your good and honored chief justice. I can only say we did our best, but he came at a most unfortunate season. The circuits were going on, and most of the judges were out of London. But he came here one day, and I announced him, and the bar received him standing, and stood up when he went away. He sat at my right hand as if he had been a member of the court. We had a reception of queen's counsel, and a curious case as to conusance of plea by the University of Oxford, in which the charters of Henry VIII and Queen Elizabeth were produced in original, and the chief justice inspected them both. I pressed him and Mrs. Waite to come and stay with me, but (wisely, I think) he preferred the freedom of a hotel. However, I got together all the great lawyers I could, and gave him and Mrs. Waite a dinner. I did all in my power in other ways, not merely as a duty, but from gratitude to him and his colleagues for the great kindness and honor they showed me, and from deep and unfeigned regard for the Chief Justice himself. He writes to me in a strain of thorough satisfaction: 'You know how well I was taken care of in London. Everywhere on my travels I was equally well treated. My name, if I chose to give it, was a passport to any place I wanted to see, and on the circuit I met Baron Pollock at Lincoln, and Mathew and Wills at York. They did everything that was pos-

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sible for me, and I enjoyed every moment of my stay with them. The bar of the north-eastern circuit were very anxious that I should dine with them, but I had to decline.' There is more to the same effect, but this will show you that the Chief Justice himself had no sense of slight or of discourtesy. I had proposed a bar dinner to him in one of the halls of the Inns of Court, but so many of the bench and bar must have been absent that it was thought better not to have one. I hope you will let your readers know that as far we could we did honor to a man who most justly deserves it on every ground, public and private."

Court of Claims Reports.

We have just received the 20th volume of these reports. It is a welcome volume, as are all the reports of that court. This volume is peculiarly valuable as it contains the rules and all the laws of Congress in relation to the court, carefully edited with numerous notes and references to judicial decisions of the very greatest use to those who have occasion to consult them. Among other statutes found in it are the "Bowman Act" and the "French Spoliation Act," both just now of great interest to the public.

Many of the cases reported are of unusual importance and magnitude. Among the most conspicuous are the following:

The *Eastern Railroad Case* wherein the mail contract relations between the Government and the railroads are carefully considered.

The *Union Pacific Railway Case*, in which the money judgment is larger than that in any other case which has ever been given in this country. The court awards to the claimant for transportation service $2,910,124.08, and to the defendants, as counter-claims, $4,487,807.39, and gives judgment in favor of the United States against the railway company for the difference—$1,577,683.31. The opinion was written by Chief Justice Richardson and Chief Justice Drake, in part by each, the resignation of the latter and the appointment of the former as chief justice having taken place while the opinion was in preparation.

Several cases define the duties of the accounting officers of the Treasury.

The *Dennis Case* and the *Brannen Case*, which point out the limit of their authority; and the *Meigs Case*, which shows that the Government, like a private suitor, can have its day in court upon the same matter with the same adversary but once, and that when it has been beaten once it cannot litigate the same matter again with the same party. It also points out the obligation of the accounting officers to follow the decisions of the courts.

The *Pacific Railroad Case* involves the question how far a railroad company is bound to pay for bridges burned by the contending armies in the late rebellion and rebuilt by the United States.

The *Redgrave* and *Perkins Cases* interpret the congressional act of 1882 which changed cadet engineers to naval cadets, and provided for the discharge of certain surplus naval cadets. The court holds that the law did not apply to the classes of 1881 and 1882. It also holds that the heads of departments have no constitutional prerogative of appointment to office independently of statute provisions, and that, in both appointments and removals, they are bound by the requirements of the statutes.

The *Cornell Case* involves a very important question as to how far the District of Columbia is liable for the repayment of bonds once redeemed, stolen by a clerk and transferred to innocent parties who bought them in good faith. The court holds the District liable.

The *Eastern Band of Cherokee Indians vs. The Cherokee Nation and the United States*, for a share of the funds of the nation, is full of historical interest nowhere else to be found so concisely stated.

There are many other cases well worthy of careful reading and study.

All the volumes of these reports are among the most valuable of any reports that are published. They contain so much information about the workings of the national Government and the duties of its public officers that they will always be useful for reference.

To a very great extent they contain decisions upon governmental matters that rarely come before any other court, and the opinions are written by judges whose whole time is devoted to the exposition of

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congressional enactments and the affairs of the national government, so that they are of the highest authority. In this respect, as in many others, this court is one of the most useful in the whole judicial system of the country.

Supreme Court District of Columbia.

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

THE DISTRICT OF COLUMBIA
vs.
THE WASHINGTON & GEORGETOWN RAILROAD COMPANY.

LAW. No. 22,457.

THE DISTRICT OF COLUMBIA
vs.
THE METROPOLITAN RAILROAD COMPANY.

LAW. No. 22,458.

(Concluded from last issue.)

The difficulty with the assessments made by the Board of Public Works was that the legislative assembly of the District never passed any law providing the manner of assessment, but the Board of Public Works proceeded to assess one-third of all improvements upon adjoining lots by the front foot, not by the area, not by valuation, but by the front foot without reference to the depth of the lot or value. Of course, as there was no law to authorize it, the whole system was simply illegal, and the object of this act of Congress evidently was to legalize that mode of assessment, but not to legalize the errors or excessive charges that were committed in the process of making the assessment, because the law itself provides that upon complaint by any party of errors in the assessment or of excessive charges made by the Board of Public Works, it should be the duty of the Commissioners to revise the assessments and correct them. The act says:

"That the Commissioners of the District of Columbia be, and are hereby directed to enforce the collection, according to existing laws, of all assessments of special improvements prepared under an act of the Legislative Assembly of August tenth, eighteen hundred and seventy-one, as charges upon the property benefited by the improvements in respect to which said assessments were made; provided, that upon complaint being made to the Commissioners, within thirty days from the passage of this act, of erroneous or excessive charges in respect to any of said assessments which remain unpaid, said Commissioners are hereby authorized to revise such assessments so complained of and to correct the same."

So that if an error occurred in the making of an assessment, by and through which a charge proper to be made against one man was made against another, that error should be corrected under the terms of this act. That is one kind of error that was uniformly corrected in the revision of assessments. Now it appears that there was an error in charging against the abutting lot owners the cost of paving this space, which was exclusively devolved by the law upon the railroad company; and that was one of the very errors that it was the duty of the commissioners to correct under the act of June 19, 1878. Another question was made growing out of the mistaken construction of their powers by the Board of Public Works in the early part of the improvements. They conceived, at first, that, when they laid a pavement, which was chargeable to the railroad company, they could issue a certificate of indebtedness, or certificate of stock, as it is sometimes called, against the property of the railroad company for the cost, and they might sell these assessments or certificates in market. Accordingly they did issue certificates and obtain money upon them from the First National Bank of New York.

Now, it is said that they are claiming in this suit to recover that identical money back again that they had already received, and that they ought not to be allowed to do it. At first glance this defence seems to be a very plausible one; yet, after all, it amounts to this, that though the defendant has not paid the debt that the law imposed upon it, yet it ought to be discharged entirely because the District has endeavored to realize money on that obligation from another quarter. The case might be likened to an action on a promissory note by a party, other than the maker, who takes up the note and holds

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it; the note is not extinguished as against the maker, because one goes and pays it and holds it. It depends entirely upon the intent with which it is done; whether the debt is paid and extinguished as the debt of the maker or not. He may go and voluntarily pay it, but if he does pay it with a view of holding it for himself, the maker's obligation is not discharged and the new holder has a right to sue him. That was the case decided by the Supreme Court of the United States in the case of the Freedmens' Saving and Trust Company *vs.* Dodge, 93 U. S., 379. Now, when these certificates were assigned to the First National Bank, it was not the intention of either of these parties that the obligation of the company to pay the money should be extinguished. Not at all. The District assigned that obligation to the First National Bank to be held by the latter on its own account, and clearly it did not extinguish the indebtedness of the defendant.

It is now agreed upon all hands, however, that the Board of Public Works were in error in reference to their powers, and that they had no right to issue any such certificate as was issued by them against the property of the defendant; that it gave nothing to the First National Bank; that it did not give to the bank a right of action against the defendant, nor did the certificate constitute a charge upon the property of the defendant; that the District got the money of the First National Bank for nothing; that nothing was acquired by the First National Bank, and that, therefore, nothing was parted with by the District. Now, whether the First National Bank can recover that money from the District, as for money paid under a mistake or paid for a consideration that has failed, is a question that does not concern this defendant. Certainly the moral obligation exists on the part of the District to return the money to the bank, but the indebtedness of the defendant remains undischarged, and the only representative of that indebtedness is the District of Columbia. The First National Bank does not own the debt; it is still held in legal contemplation by the District, and the fact of issuing these certificates does not interfere with the right of the District to collect its debt.

It may, then, be well to state the general principles upon which this action is sustained. It is substantially an action to recover money paid, laid out and expended, by the District for the use of the defendant at its special instance and request.

The general rule, as we know, is that a past and executed consideration is not sufficient to sustain even an express promise. Therefore if I pay money for another man, without any request from him, even his promise to pay has been held insufficient for this past executed consideration. But wherever the money is paid on the request of the party benefited, the right to recover does exist. That request may be either expressed or implied. The general rule is stated in Wait's Actions and Defences, cited on the part of the defendant in argument. At page 449 of volume 4 of that work it is said:

"An action of assumpsit for money paid by one person for another can only be maintained when it was paid in pursuance of a request from such person, express or implied, so that either an expressed or implied promise to repay the same can be predicated thereon."

Again, on page 453:

"In order to entitle a person to recover for money paid for another, a request, express or implied, must be established, or an express promise to repay it, and it may be said that, in all cases where there is a legal obligation on the part of the person paying to pay the money, the primary obligation resting upon the person for whose benefit it was paid, the law implies a request and a consequent promise that will uphold an action to recover it back."

Now what is the relation between the District and the railroad company? In the case of Barnes *vs.* The District of Columbia, it will be remembered that the Baltimore & Potomac Railroad Company, in crossing certain streets within the limits of the city, left a dangerous excavation, down which the plaintiff fell, and he brought an action for the injuries he had sustained. The main question there was whether the acts or neglects of the Board of Public Works were chargeable to the District, but the important

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principle established in that case, as applicable to this case, was that the District of Columbia is responsible for the condition of its streets, and is bound to see that they are kept in good condition, and where a railroad company is authorized to construct its road in a street or avenue, the District is the company's surety for the safe condition of its streets, and cannot be absolved from obligation.

The District of Columbia—the Board of Public Works at that time—was bound bound for the proper paving of the streets, in the relation of a surety to the railroad company, on whom primarily the obligation rested. Now, in the cases which are put in the books, it is not necessary that any notice be given, or demand first made, upon the principal before the surety's right accrues to pay the debt, and then to recover the money paid on account of the principal. The very fact that the obligation has not been discharged by the principal is, in itself, sufficient to entitle the surety to pay the debt, and then reclaim the money from his principal. It is upon this ground, we think, that this defendant not having done or offered to do the work, and the District being responsible for the condition of its streets, the District should proceed at once to do the work as surety, and then claim the money from the defendant, who is primarily responsible for the condition of the street, upon the implied promise to refund the money.

We recognize the rule which was recognized by the court at Special Term, that if the company chose to do the work they might do it, and they might have enjoined the District authorities from interfering with them, but if they fail to offer to do it, fail to notify the District authorities, then there was that condition of things which would authorize the District to do the work at its own immediate expense, but at the ultimate cost of the defendant, and to reclaim the money from the latter.

There is is still another ground to be noticed in this connection. The second prayer granted by the court below was:

"The jury is instructed that, in determining whether the defendant company had notice or knowledge that the municipal authorities had directed and ordered that new pavements should be laid on the said streets and avenues, and had entered upon the performance of the said work, they are authorized to consider the testimony, to the effect that the defendant changed the grades of its track so as to conform to the grades of the new pavement; that its cars were running along the said streets and avenues while the work was progressing; and that the defendant obtained an injunction to prevent the paving of the spaces between its tracks, while the rest of the streets and avenues were being paved, with the other testimony in the case."

Now the facts developed in this regard were, that while the District was asserting its right and duty in paving the streets in the first instance at the cost of the defendant, the defendant came into court and objected to the District's paving between its rails, but made no objection to its paving on the outside of the rails. In other words, it tacitly consented to the right claimed by the District to pave this part of the street at the expense of the company, and this would bring the case within the rule elsewhere laid down in Wait, p. 453, as follows:

"Thus, where one pays money to satisfy a debt of a person, at his request, from such request the law would imply a promise to repay it." Cook *vs.* Linn, 19 N. J. Law, 11; Mills *vs.* Johnston, 23 Tex., 308.

"And this would be the case where there is no express request, but a tacit assent to such payment, as where A pays money for B when B is present, to which he does not object, unless the circumstances are such as to indicate that it was gratuitous, the law from such tacit assent will treat the money as having been paid at B's request." Packard *vs.* Lienoir, 12 Moss, 11.

It has been claimed that this was money paid under a mistake of law, and the general rule has been insisted upon that money paid under a mistake of law cannot be recovered back. According to the view we have taken there was no mistake of law, as the District had a right to do the work and charge it to the defendant. The general rule as to money

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paid under a mistake of law has no application to this case. That rule is, that if I pay money under the mistaken impression that it is my duty to pay it—that it is my debt—and I discover afterwards that I was not bound to do it, I could not recover the amount so paid from the party to whom paid. Accordingly, if the District authorities had paid this money to a contractor for work that the District was not bound to do, it could not recover the money from the contractor. But if the District could not recover it from the defendant in this case, it would not be upon the ground that it was paid under a mistake of law, but because it was paid by the District without any previous request of the defendant, express or implied. But, independently of that, it is doubtful how far such a rule could have application to public officers. If a public officer undertakes to pay the public money under the mistaken impression that it was his duty to do it, it would not relieve the person really owing it from the obligation to pay it.

These are the general principles that we understand govern this case. The plaintiff asked ten different instructions and the defendant asked twenty-one; there were thirty-one instructions asked for altogether. These were all rejected by the court, save two granted at the instance of the plaintiff, and the court gave some of its own motion. We do not propose to examine these instructions in detail. It is sufficient to say that we have looked over them, and we have come to the conclusion that the judge's rulings were in conformity with the law, as we have defined it, and ths judgment is therefore affirmed.

In the case of the District against the Metropolitan Railroad Company precisely the same questions arose, with an additional one.

In the case of the Washington & Georgetown Company, the District only had occasion to pave the spaces outside of the exterior rails two feet, but in the case of the Metropolitan Railroad Company, the District did the whole work between the rails and two feet outside of the exterior rails, and seeks therefore to recover the whole of that.

The evidence as to the work and the knowledge upon the part of the defendant is substantially the same in both cases. The correspondence which is in the record shows that the officers of the company were fully advised of the progress of the work and it is not necessary to go over that. I will simply refer to one item on page 82 of the record:

"That at the commencement of the work on the line of the defendant's railroad, then constructed and laid, the right was claimed by the defendant when the pavement in the spaces aforesaid laid by the defendant, had been taken up on account of a change in grade to relay the said pavement, which right was denied and refused by the said Board; and that the said Board in awarding the contracts for all pavements to be laid on the line of the defendant's railroad declared and defined its policy and determination that it would itself lay the said pavements over the entire roadway, from curb to curb, and with such material as the said Board had selected, and that neither in the laying of said pavement, nor in the selection of the material to be used, did the defendant take part.

"The defendant further gave evidence tending to prove that it never received any request or demand on behalf of the plaintiff, or the said Board, nor had any opportunity afforded to do any part of the work mentioned in the declaration, nor did the said defendant offer to do any of the work sued for."

The company were perfectly well apprised of the fact that the Board claimed the right to do this work and denied their right to do it. The defendant asserted its right to do it provisionally, but not in any legal proceeding that they might have taken. They said that they were deprived of the opportunity to do it, not that they offered to do it. They appear to have stood still and quietly acquiesced in the doing of the work by the District. The same principles of law apply to this case as the other. There was one additional feature, however, in this case.

A part of the road of this company was authorized to be run through certain streets where they had not commenced to lay their tracks at the time the board pro-

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ceeded to lay the pavements that they had selected for the different streets. The president of the company entered into correspondence with the Board of Public Works, the most important part of which is found on page 78 of the record where it appears that Mr. Thompson wrote to the Board of Public Works in these words:

"Your board having recently ordered the paving of certain streete through which Congress had given this company permission to lay rails whereon to run street cars, we would respectfully ask the privilege to lay down the sleepers and cross-ties as the paving progresses, thereby preserving the streets and avenues from being cut up at a future day in the execution of this work. It is the intention of this company to extend the Metropolitan railroad westward from its present terminus to Georgetown and eastward to Uniontown, and also lay tracks on Ninth street from Pennsylvania avenue to the Boundary, and in Four-and-a-half street from the City Hall to the Arsenal gate, as soon as the property holders along these lines subscribe to additional stock, which, it is hoped, will be done shortly. The company are willing, with the permission of the board, to go on at once and lay the timbers for these lines, fully preparing them for the rails to be put in at some future time. To keep a well laid pavement in good order it is desirable to avoid all excavation, particularly in the center of the street. This consideration doubtless influenced your board in the wise precaution of ordering all water, gas and service pipes to be laid prior to the paving. The necessity is more apparent, where railroad privileges have been granted, to have the timbers laid as the paving progresses which will not only be a benefit to the city but add to the comfort of those residing upon or passing over the street. We are willing to anticipate the putting down of the sleepers and cross-ties of our contemplated extensions, provided the paving be done by your own contractor without charge against us, and should be pleased if the suggestion herein submitted should meet the favor of your board."

The District went on and laid the pavements of these streets, and at the same time the company laid its stringers and cross-ties and prepared them for adaptation to the uses of the road at some future time; and it is now claimed that they ought not to be charged for that part of the pavement laid between the rails of this road and the two feet outside. Whenever the company undertook to lay down its railroad where there was no pavement, it is very clear that the obligation to keep the streets well paved involved the obligation to construct pavements anew. If the charter had authorized it to lay its road on a street already paved, and that pavement could be utilized so that the road could be laid down without destroying it, I suppose the obligation of the company would have been satisfied if it kept the existing pavement in good condition, and it would not be bound to pay the District for a pavement constructed before the road was even chartered. This case covers these two supposed cases. It is a case where the street was not paved at all when the charter was given, but where the company had elected before the pavement was laid down to extend its road into the street.

Now there was offered in evidence an act of Congress under date of March 3, 1869, under which the company claimed that it had five years from that date within which to complete its road. However that may be, the company, as we have seen, addressed a letter to the Board of Public Works, which has already been referred to, by which they proposed to have the same benefit of the pavement that the board should lay down as if they had constructed their road simultaneously with the pavement, but they claimed at the same time not to be charged—not to be burdened with the same charge that the law would impose upon them under such circumstances. For that purpose they proposed to divide up the process of constructing their road so that a part of it would post date the completion of the pavement and then claim that they did not occupy the street with their road until after the pavement had been made.

Now, it seems to us that, as this company had elected to construct their road in the street, and have the use of the pavement which the board was laying

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down, and complete their road after the pavement was completed, that this process of constructing their road was to be treated as one thing; that they could not divide it up so as to get the benefit of the pavement that the board was laying, and yet avoid the charge that the law imposed upon them when they constructed their road simultaneously with the work done by the board, and that when they did use and occupy the street for the purpose of their railroad, they should reimburse the board for the paving that was done for their benefit; that when Mr. Thompson said that they were willing to lay their stringers and cross-ties, "provided the paving be done without charge to us," he should have said, "provided, that when the road is completed, and when we occupy the street hereafter, we will reimburse you for the work you are now doing."

There is, in our judgment, no error in the case, and I will make the same remark about this case as I did about the other, that there is a great number of instructions which are substantially the same in the two cases. We think the judgment in this case should also be affirmed.

United States Supreme Court.

No. 17 —OCTOBER TERM, 1885.

HIRAM K. HAZLETT, Appellant,
vs.
THE UNITED STATES.

Appeal from the Court of Claims.

A person who, by a contract made with him by the quartermaster's department of the army in behalf of the United States, agrees to furnish all the steamboat transportation required by the United States for officers and soldiers between certain places, and to certain Indian posts and agencies, during a certain time, and to "receive from the officers or agents of the quartermaster's department all such military, Indian and Government stores, supplies, wagons and stock, as may be offered or turned over to him for transportation . . . by said officers or agents of the quartermaster's department, and transport the same with dispatch, and deliver them . . . to the officer or agent of the quartermaster's department designated to receive them," at a certain rate, is not entitled to claim compensation for Indian supplies, never in the charge of the quartermaster's department for transportaion, transported, between places named in the contract, by another person under a contract between him and the Commissioner of Indian Affairs; although during the same time some Indian supplies are delivered by the Commissioner of Indian Affairs to the quartermaster's department, and by that department turned over to the claimant for transportation at the rate specified in his contract.

Mr. Justice HARLAN delivered the opinion of the court.

The foundation of this action is a written agreement of February 17, 1870, between the United States and the appellant, who was claimant below, in relation to the transportation by him, at specified rates, of military, Indian, and Government stores, supplies, wagons, and stock. Full compensation was made for all services actually performed by him. But he contends that he was entitled to transport certain Indian stores and supplies, which were delivered, against his protest, to the Northwest Transportation Company for transportation to posts and agencies included in his contract. The supplies and stores last named were transported under a written contract made, without advertisement, by the Commissioner of Indian Affairs, in September, 1870, at higher rates than those allowed the claimant. If they had been transported by him, under his contract, he would have realized a large profit, after deducting what it would have cost to do the work, and also a reasonable sum for being relieved from the care, trouble, responsibility, and risk attending such service. Although fully prepared and offering to transport them, the officers of the Indian Bureau refused to turn them over to him. This, he contends, was a breach of his contract. The court below adjudged that the law was with the Government and dismissed his petition. He now insists that the judgment proceeded upon an erroneous construction of his contract, and was, also, inconsistent with the practical interpretation given to its provisions by officers of the Government immediately charged with its execution.

We are of opinion that the claimant has no cause of action against the United States. The contract did not obligate the Government to deliver to him, nor did it bind him to receive, for transportation during the period designated, all Indian supplies or stores, in the hands of its agents or officers, of whatever department or branch of the public service. It was made with the claimant by an officer of the quartermaster's department under directions from the quartermaster-general of the army. By its first article he became bound to furnish all the steamboat transportation required by the United States for officers and soldiers on the Missouri river between certain named places, and for posts or

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Indian agencies between certain other named places, at any time from March 20, 1870, to October 31, 1870. He agreed to "receive, at any time during that period, from the officers or agents of the quartermaster's department, at St. Louis, or any point between St. Louis and Fort Benton," mentioned in the tabular statement annexed to the written contract, "all such military, Indian and Government stores, supplies, wagons, and stock as may be offered or turned over to him for transportation, in good order and condition, by said officers or agents of the quartermaster's department, and transport the same with dispatch, and deliver them in like good order and condition to the officer or agent of the quartermaster's department designated to receive them," &c. These words define the nature and extent of the obligations assumed by the contractor. It was entirely competent for the quartermaster's department to enter into an agreement whereby the contractor became bound to receive from its officers or agents all such military, Indian or Government supplies as they might deliver to him for transportation. But it had no authority, without reference to the views of the Interior Department, and of the officers having special connection with Indian affairs, to control the transportation of Indian supplies or stores of every kind. Nor did the quartermaster's department assume to exercise such authority; for it only stipulated with claimant that he should receive and transport such supplies and stores as were turned over to him by its officers and agents. As, therefore, the claimant was not bound to receive Indian supplies or stores turned over to him for transportation by the Indian Bureau, the employment, by the Commissioner of Indian Affairs, of others to effect the transportation of Indian stores and supplies—which were never, so far as the record discloses, in charge of the quartermaster's department for transportation—was not an infringement of his legal rights. There is no escape from this conclusion, unless it be that the quartermaster's department had, under the law, the sole power of making contracts for the transportation of Indian supplies and stores. But that proposition can not be maintained.

It is also contended that the Government, in view of the conduct of its agents, subsequent to the making of the contract with claimant, cannot now be permitted to dispute the proposition that he was entitled, by his contract to receive for transportation, during the period designated, all Indian supplies and stores, by whatever department held, which were to be sent to the several Indian posts or agencies designated in that contract.

This proposition arises out of the following facts found by the Court of Claims:

"It does not appear that either the Commissioner of Indian Affairs or the Secretary of the Interior had actual knowledge of the fact that the contract in suit existed with the claimant relating to the transportation of Indian stores and supplies by or through the officers of the quartermaster's department, nor did they expressly authorize General Rucker to enter into a contract for the transportation of Indian stores or supplies, nor did they ratify such contract, unless its ratification be implied from the following facts and circumstances: The Indian Bureau directed that two lots of Indian supplies be forwarded in April and May, 1870, amounting to 221,242 pounds, which was accordingly done by Quartermasters Gilliss and Fury, at Sioux City, Iowa, turning them over to claimant for transportation, and they were by him transported (under his contract with the quartermaster's department to include the transportation of the Indian supplies) to Whetstone and Big Cheyenne agencies, and the Indian Bureau reimbursed the War Department for this transportation. The Commissioner of Indian Affairs and the Secretary of the Interior directed the Secretary of War, June 21, 1870, to turn over the army subsistence stores collected at the instance of the Commissioner of Indian Affairs for the Indians at Forts Rice, Stevenson, Buford, and Shaw to the Indian agents at the Grand River and Fort Berthold agencies, and that the cost of transporting the stores from the forts to the agencies would be paid by the Indian Bureau. The claimant transported, September 27, 1870, 82,720 pounds of Indian stores and supplies from Fort Rice to Grand River agency, for which he was paid accordingly. The contract in suit was duly filed in the returns office of the Department of the Interior the 12th of March, 1870."

These facts give no support to the suggestion that the Government recognized claimant's right to transport all Indian supplies for the posts or agencies named in his contract. That contract did not forbid the quartermaster's department from receiving Indian supplies, in the first instance, from the Indian Bureau, and delivering them to the claimant for transportation under his contract. And that which was done in respect of the Indian supplies forwarded in April and May, 1870, and of those transported in September, 1870, to Grand River agency, so far from implying authority in the quartermaster's department to control the whole matter of the transportation of Indian supplies, was a recognition

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of the authority of the officers, having special charge of Indian affairs, to provide for the transportation of any Indian supplies in their hands. For the cost incurred in transporting Indian supplies to the Whetstone, Big Cheyenne and Grand River agencies was borne by the Indian Bureau. If the Indian Bureau chose to make arrangements with the War Department for the transportation of certain Indian supplies, under the contract made with the claimant, that fact falls short of proving that the purpose was to grant him the right to transport all Indian supplies, by whatever department or officers held, to the posts or agencies designated in his contract.

We perceive no error in the judgment, and it is affirmed.

NOTES OF RECENT DECISIONS.

Promissory Note: Payment of Interest after Maturity; Statute of Limitations.—A payment of interest on a promissory note after maturity, and the indorsement of such payment thereon, prevents the Statute of Limitations from running prior to the time of such payment. [Yesler v. De Koslowski; Sup. Court of Washington Territory.]

Agent: Of Insurer or Insured in Mutual Fire Insurance Company.—Where the agent employed by a mutual company filled up the answers to the application, this did not constitute him the agent of the insured, notwithstanding a provision in the by-laws made the soliciting agent the agent of the insured. [Nassauer v. Susquehanna Mut. Fire Ins. Co.; Sup. Court of Penn.]

Debtor and Creditor: Payments for Benefit of Creditor.—One person cannot, without authority, pay the debt of another, and charge the amount so paid against the party for whose benefit the payment was made.

Contract with Municipality: Terms cannot be Changed by Legislation.—A contract entered into with a municipality, which provides for a certain mode of payment by the city, cannot be changed by subsequent legislation, so as to authorize a performance different from that prescribed in the contract. And payments made, in conformity with such subsequent legislation, will not bind the contractor unless assented to by him. [McGee v. City of San Jose; Sup. Court of California.]

Nuisance: Damages.—1. In an action for damages for maintaining a nuisance, the fact that the ditch complained of, into which were emptied slops and water, had been dug and so used by those who occupied the premises prior to defendant's accession to its ownership, and that defendant merely continued the use, is no defence; as he who continues a nuisance is as much answerable therefor as he who first created it.

2. The owner of property is entitled to enjoy the fullest dominion and benefit of his own, consistent with the public weal and the lawful rights of others; and what another does to deny the amplitude of this right is an injury for which an action of damages lies. [Beckly v. Skroh; Court of Appeals of Missouri.]

Instructions.—Where instructions, taken as a whole, fairly presented the questions raised by the pleadings, judgment will be affirmed. [Kennedy v. Klein; Court of Appeals of Missouri.]

Assault with Intent to Rob.—The violence which is essential to the crime of robbery, must be concomitant with the taking of the property from the person of another.

2. On the trial of a person indicted for the crime of assault with intent to rob, it is error to refuse to charge that violence, in order to constitute the crime, must not be subsequent to the attempt to take the property.

3. Such indictment will support a conviction for assault and battery, and it is error to refuse to so charge.

4. The record of a conviction for crime must show that the defendant was arraigned on the indictment. [Hanson v. State; Sup. Court of Ohio.]

ABOUT two years ago the Marquis de Mores, an English nobleman in Dakota, surrounded his possessions there with a wire fence. For this offense the cowboys threatened to kill him, and advanced upon his residence for that purpose. With a friend, however, he ambushed them on their way to his house, and killed one of them. He was recently indicted for murder by the grand jury, but the judge has granted him a change of venue from Mandan to Bismarck on the ground that he would not be fairly and impartially tried at Mandan. To disprove the falsity of this reason the people of Mandan have held an "indignation meeting," and speeches were made by the exasperated citizens and attorneys, who declared that the action of the judge was an insult to the town. In further proof of their calm and judicial attitude, resolutions were passed asking for the removal of the judge. The half drunken man who shot a comrade because he reproached him with "being too quick on the trigger," must have presided over the "deliberations" of the citizens of Mandan.

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"VERE is ze plaze for ze what-you-call-em for the marriage," inquired a Frenchman of the gentleman in charge of the marriage license department of the Orphans' Court of Philadelphia. "Il faut zat I ze paper get for marry Sal."

"Here you are," returned the marriage clerk, in his business way. "What is your name and age?"

The Frenchman, evidently a sailor, answered all the necessary questions till the query was put as to the lady's name.

"Sal," was all he knew.

"Mais zere ees plenty name enough. Sal ees right. Sally toujours. That's all."

"Ah, yes," exclaimed the clerk, with a sigh of satisfaction, "Sally Todgers. Now, how old is Miss Todgers?"

"Twenty-six."

"What day was she born?"

"Mais I do not know. She do not know. Zere is nobody zat know."

"Was she ever married before?"

"Oui, vunce; it is five year."

"Where is her husband?"

"I do not know, 'e ee's four year dead."

"Did you know him?

"Non, I was not acquaint. Sacre, ee's it necessaire zat I should him know? I do not like ze idee."

It was explained that an acquaintance with the deceased was not absolutely essential, though possibly useful, and the Frenchman paid his fifty cents and left the office with the license to seek "Sally Todgers," as the name appeared on the paper.

The Courts

U. S. Supreme Court Proceedings.

DEC. 14, 1885.

Edward Branch Cowan, of St. Louis, Mo.; C. L. Raison, jr., of Newport, Ky.; Daniel O. Finch, of Des Moines, Ia.; J. A. Williamson, of Washington, D. C., and Thomas J. Layman, of Benton, Ill, were admitted to practice.

No. 1169. Angus M. Cannon, v. the U. S.; judgment affirmed. Opinion by Mr. Justice Blatchford, Justices Miller and Fields dissenting.

No. 229. Michael Hanley et al. v. Charles Donoghue; judgment reversed with costs and cause remanded. Opinion by Mr. Justice Gray.

No. 80. The Bridgewater Iron Co. v. Herman Lisberger; judgment affirmed with costs and interest Opinion by Mr. Justice Gray.

No. 992. Wm. S. Roberts v Philip Reilly; decree affirmed with costs. Opinion by Mr Justice Matthews.

No. 72. Wm. D. Marvel v. Edwin A. Merritt, late collector, etc.; judgment affirmed with costs. Opinion by Mr. Justice Matthews

No. 81. The Saxonville Mills v. Thomas Russell, late collector, etc.; judgment affirmed with costs.

No. 67. Asa C. Call v. Henry H. Palmer; decree affirmed with costs. Opinion by Mr. Justice Woods.

No. 78. The U. S. v. John H. Mooney; judgment affirmed. Opinion by Mr. Justice Woods.

No. 36. Anton Miller et al v. Samuel J. Foree et al; decree affirmed with costs. Opinion by Mr. Justice Bradley.

No. 554. The Utah & Northern R'y Co. v. Wm. F. Fisher; decree affirmed with costs. Opinion by Mr. Justice Field.

No. 75. Wm. C. Holgate et al. v. Rufus I. Eaton, administrator, etc.; decree reversed with costs and cause remanded. Opinion by Mr. Justice Miller.

No. 1142. Susie M. Kerr et al. v. the South Park Commission; motion to advance granted and cause assigned for argument. Opinion by Mr. Chief Justice Waite.

No. 999. Brooke Mackall, jr., v. Alfred Richards et al.; dismissed with costs. Opinion by Mr. Chief Justice Waite.

No. 1061. The Minneapolis & St. Louis R. R. Co. v. Oliver Beckwith; motion to dismiss denied. Opinion by Mr. Chief Justice Waite.

No. 922. The Oregon R'y & Navigation Co. v. The Oregonian R'y Co. (limited); motion to advance and affirm denied. Opinion by Mr. Chief Justice Waite.

No. 58. John Patch v. E. E. White; petition for rehearing granted.

No. 210. The U. S. v. Ben. Price; judgment affirmed. Opinion by Mr. Chief Justice Waite.

No. 442. George F. Akers v. Albert Akers; advanced pursuant to 32d rule.

Nos. 934 and 935. The State of Tennessee v. Geo. K. Whitworth, trustee; motion to advance submitted.

No. 933. P. P. Pickard, comptroller, etc., v. the Pullman Southern Car Co.

No. 936. The State of Tennessee v. Same; motion to advance submitted.

No. 682. John R. Elder v. Emma W. Ulman; dismissed with costs per stipulation.

No. 983. Edward A. Boyd et al. v. the U. S.; argument concluded.

No. 588. Henry C. Brown v. James B. Grant, Governor, etc.; argument commenced.

DEC. 15, 1885.

George T. Barnes, of Augusta, Ga., and Samuel Nicholson, esq., of Ottawa, Ill., were admitted to practice.

No. 588. Henry C. Brown v. James B. Grant, governor, etc., et al.; argument concluded.

No. 195 The Kings County Savings Institution v. Benjamin F. Blair, administrator, etc.; argued.

No. 95. Louis C. Royer v. Russell & Co.; dismissed with costs pursuant to section 2, rule 10.

DEC. 16, 1885.

Henry S. Boutell, of Chicago, Ill., and Roger Foster, of New York city, were admitted to practice.

No. 96. The S. W. Railroad Company v. William A. Wright, comptroller-general; and No. 471. The S. W. Railroad Company v. The State of Georgia; argued.

No. 97. R. W. Healy et al v. The Joliet & Chicago Railroad Company et al.; argument commenced.

DEC. 17, 1885.

Sardius D. Bentley, of Rochester, N. Y.; Johnstone Jones, of Asheville, N. C., and Thomas R. Robertson, of Charlotte, N. C., were admitted to practice.

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No. 106. The County of San Mateo v. The Southern Pacific Railroad Company; motion to dismiss submitted.

No. 97. R. W. Healy et al. v. The Joliet & Chicago Railroad Company et al.; argument concluded.

No. 98. John Doe, ex dem., The State of Alabama, ex dem., John Swann et al., trustees, etc., v. Vanee C. Larmore; submitted.

No. 99. John C. Webb, administrator, etc., et al., v. Henry Barnwall et al., etc.; submitted.

No. 100. Hiram L. Brown et al. v. Chas. F. Davis et al., etc.; argued.

No. 101. Alphonso E. Pelham v. E. B. Demarest; dismissed with costs.

No. 102. B. W. Mower v. Nathan Fletcher; and

No. 103. B. W. Mower v. Nathan Fletcher et al.; argument commenced.

DEC. 18, 1885.

At the meeting of the court Attorney-General Garland said: "May it please the court; at a meeting of the bar of this court held last Monday in this chamber, to give expression touching the death of our late distinguished brother, Richard T. Merrick, suitable resolutions were adopted, and I, as Attorney-General, was requested to present them to this court for such action as might be deemed proper for the court to take. My own relations with the deceased and his bright and honorable record in this court make the performance of this duty by me one of melancholy pleasure, and I now comply with that request."

The Chief Justice directed that the resolutions be placed on the files of the court.

No. 1055. The United States v. The Spanish brig, Purissima Concepcion; dismissed.

No. 1056. The United States v. Juan Jose Murga, claimant, etc.; dismissed.

No. 1108. William G. Ford, administrator, etc., v. The United States; submitted pursuant to twentieth rule.

No. 102. B. W. Mower v. Nathan Fletcher.

No. 103. B. W, Mower v. Nathan Fletcher et al.; argument concluded.

No. 104. Elisha Crowell v. George A. Beardsley et al.; dismissed with costs pursuant to section 2, rule 10.

No. 105. The Boneless Fish Company v. William H. Roberts et al.; dismissed with costs pursuant to section 2, rule 10.

No. 106. The County of San Mateo v. The Southern Pacific Railroad Company; passed.

No. 1054. The City of Milwaukee v. Charles A. Koefler; submitted pursuant to twentieth rule.

No. 882. John H. Stebbins et al. v. The Town of St. Anne, Ill., et al.; submitted pursuant to twentieth rule.

No. 1016. G. E. Coney et al. v. A. E. Wonchell; submitted pursuant to thirty-second rule.

SUPREME COURT OF THE DISTRICT OF COLUMBIA

IN EQUITY.—New Suits.

Dec. 11, 1885

9735. Theodore I. King v. Edward Swan et al.

Dec. 12, 1885.

9736. Margaret Merrick et al. v. Louise Merrick et al. Partition by sale. Com sol, Morris and Hamilton.

9737. ——

Dec. 14, 1885.

9738. The Farmers & Mechanics' National Bank v. Benjamin D. Stephen et al. Interpleader. Com sol, C. M. Matthews.

Dec. 15, 1885.

9739. Henry Bergling et al. v. John Ardeesar et al. To reform trust deed, &c. Com sol, L. Tobriner.

Dec. 16, 1885.

9740. Wm. D. Serrin v. Mary S. Fowler et al. Partition and Acct. Com sol, E. H. Thomas.

Dec. 17, 1885.

9741. Laura Ambush et al. v Nora J Kimes et al. To substitute trustee. Com sols, Brooke and Darlington.

9742. Henry M. Knight et al. v. Mary Sheed et al. Com sols, Hagner & Maddox.

Dec. 18, 1885.

9743 George B. Lockhart v. Wm. Clabaugh et al. Receiver and acct. Com sols, C M. & H. S. Matthews.

9744. The Real Estate Title Ins. Co. v Jas. Ginnaty et al. Judg't creditor's bill Com sol, John Ridout.

CIRCUIT COURT.—New Suits at Law

Dec. 7, 1885.

26538. Columbus Alexander v. Charles N. Schonberger. Acct. $125. Piffs atty, F E. Alexander.

26539. Elias Travers v. John T. Mitchell et al. Note, $169. Piffs atty, G. E. Hamilton.

26540. Edward Clarke v. The District of Columbia. Acct., $2000. Piffs attys, Paine and Miller.

Dec. 8, 1885.

26541 Michael Talty v George W. Harvey et al. Acct., $450. Piffs atty, A. B. Williams.

26542. Paxson, Comfort & Co. v. Richard T. Harvey. Note, $168 45 Piffs atty, B. F Leighton.

26543. Thos. W. Smith v. Henry M. Fry. Judg't of Justice O'Neal, $81.86

26544 Frederick W. Bergman v. Wm. Lewis Judg't of Justice Walter, $87.05.

Dec. 9, 1885.

26545. Frank D. Smith v Joshua Hill. Ejectment. Piffs attys, Kimball and Darlington.

Dec. 10, 1885.

26546. John C Albright v. Wm. Lewis. Judg't of Justice Buckey, $44 25.

Dec. 11, 1885.

26547. Morrison, Herrman & Co. v. Joseph Herzog. Acct., $449 50. Piffs atty, Leon Tobriner.

Dec 12, 1885.

26548. James E. Dexter v. Madam Emma Soula. Judg't of Justice Helmick, $150.

26549. John Van Riswick v John J. Johnson et al. Notes. $750. Piffs attys, Worthington & Heald.

26550. W. K. Carson & Co. v. Henry S. Berlin, trustee, &c. Replevin. Piffs atty, C. M Smith.

Dec. 14, 1885.

26551. Christian Heurich v. Wm. Lewis. Judg't of Justice O'Neal, $95. Piffs atty, Leon Tobriner.

26552. Otterbury & Co v Frederick Hugle. Acct., $726.66 Piffs attys, Cahill and Miller.

26553. Githers & Voxsamer v. Henry S. Berlin, trustee, &c. Replevin. Piffs atty, C C. Cole.

26554. The U. S. v George Hill, jr., et al. Bond. $4000. Piffs atty, A S. Worthington.

26555 Wm. T Okie et al. v. Jacob K. Upton. Acct., $181. Piffs attys, Norris & Norris.

26556. The Anglo-American Ins. Co. v. The Dist. of Col. Acct., $275. Piffs atty, Wm. A. Meloy.

26557. R. Isaacs & Bro. v. T. Isaacs & Bro. Acct., $253.97. Piffs atty, F. W. Jones.

PROBATE COURT.—Justice Hagner.

Dec. 18, 1885.

Estate of August Vollbrecht. Answer of executor filed and executor ordered to pay funds into court.

Estate of Daniel O'Connor. Will admitted to probate.

Estate of Thomas Thornley. Petition of widow for probate of will.

Estate of Thomas H. Harbin. Will admitted to probate.

In re guardianship of Emma V. and Norman McIntyre. Order allowing guardian, E. A. McIntyre, to increases the allowance to his wards to $400 per annum for their maintenance.

Estate of Cornelius Donovan. M. G Emery jr., appointed administrator.

Estate of Charles D. Pearson. Petition for probate of will filed.

Estate of W. E. Sherman. Exceptions to administrator's accounts filed.

JAMES L. ANDEM,

STENOGRAPHER, U. S. COMMISSIONER,

EXAMINER IN CHANCERY,

418 SECOND STREET, N. W.

Telephonic Connections

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 16th day of December, 1885

HENRY BERGLING et al. v. JOHN ARDEESAR } No. 9739 Eq. Doc. 25.

Bill to reform a deed.

On motion of the plaintiffs, by Mr Leon Tobriner, their solicitor, it is ordered that the defendant, Francis Prott, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 51 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

GERTRUDE F SMITH v. ELIZABETH SMITH, Trustee, et al. } No 9331. Eq Doc. 25.

The trustee in this cause, having reported to the Court that he has received from John A. Prescott, an offer of purchase of lot 8 in square 198, in the City of Washington, D. C., at the price of $8,600:

It is, ordered that said offer be accepted by the trustee, and said premises sold to said Prescott, unless cause to the contrary be shown on or before the 16th day of January, 1886.

Provided, that a copy of this order be published in the Law Reporter once a weekN for three weeks before said day.

By the Court. A B. HAGNER, Justice.
A true copy. Test 51 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration on the personal estate of John Thomas Newton, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 17th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of December, 1885.

51 ADELA I. NEWTON,
HAGNER & MADDOX, Solicitors Administratrix.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA Sitting in Equity. December 18, 1885.

THOMAS Y CONLEY et al. v GEORGE SKAGGS et al. } 771. Equity Docket 8.

Richard T Morsell, trustee in this cause, having reported that Charles A. McEuen, with whom he was, by the decree in this cause passed on the 4th day of December, 1885, authorized to contract for the sale of the property mentioned in the original decree in this cause has made deposit of $50 00 on account of said purchase, and has assigned his purchase to John H Ketcham:

It is, by the Court, this 18th day of December, 1885, ordered that said sale be, and hereby is ratified and confirmed unless cause to the contrary be shown on or before the expiration of thirty days from the date thereof.

Provided a copy of this order be inserted in the Washington Law Reporter once in each of three successive weeks before the expiration of said thirty days.

A. B. HAGNER
A true copy. Test: 51 R. J MEIGS, clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Holding a Special Term for Orphans' Court Business. December 4th, 1885.

In the matter of the Will of Timothy Sands, late of the District of Columbia, deceased.

Application for the probate of the last Will and Testament of said deceased, dated October 27th, 1885, and for Letters Testamentary on the Estate of the said deceased, has this day been made by John D. Croissant and Mary E. Davis, two of the Executors

All persons interested are hereby notified to appear in this court on Friday, the 8th day of January next at 11 o'clock a m. to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A B. HAGNER, Justice.
Test: 49 H. J. RAMSDELL, Register of Wills.
WM. A. COOK, Solicitor.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business. December 18th, 1885

In the case of Mary E Wollard and Charles F. Wollard, Administrators of James F Wollard, deceased, the Executor aforesaid has, with the approval of the Court appointed Friday, the 8th day of January, A. D. 1886, at 12 o'clock m, for making payment and distribution under the court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrators will take the benefit of the law against them. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test 51 H. J. RAMSDELL, Register of Wills.
D W GLASSIE, Solicitor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Adaline McIntire, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of December, 1885.

EDWIN A. McINTIRE.
50 Executor, 918 F Street, N. W.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Alfred Edelin, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of November, 1885.

ARTHUR A. BIRNEY,
50 Administrator.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Francis P. Hughes, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 8th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of December, 1885.

50 JENNIE A. HUGHES,
EDWARDS & BARNARD, Solicitors. Administratrix.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

ANDERSON et al. v. ANDERSON et al. } Equity. No. 9620.

Watson J. Newton, the trustee in the above entitled cause, having reported that he has received an offer of $925 for the real estate in the proceedings set out, from Frank M Green. It is this 5th day of December, 1885, ordered that the offer be accepted and that the sale to the said Frank M. Green, be and is hereby ratified and confirmed unless cause to the contrary be shown on or before the 5th day of January, A D. 1886.

Provided a copy of this order be published once a week for three successive weeks in the Washington Law Reporter and in the Evening Star before said last date.

By the Court. A B. HAGNER.
A true copy. Test: 49 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of Washington, D. C., has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Emeline M. Morse, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of December next; they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 5th day of December, 1885.

49 ALICE H. MORSE, Administratrix.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 9th day of December, 1885.

FRANK D. SIMMONS, TRUSTEE. v. JOSHUA HILL. } No. 26,845. At Law.

On motion of the plaintiff, by Mr. Kimball his attorney, it is ordered that the defendant, Joshua Hill, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day, otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.
A true copy. Test: 50 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

MARY J. YOUNG, By her next friend, v JANE HART et al. } Equity. No 9694.

The trustee, Samuel Maddox, having reported to the Court that he has sold the real estate in the proceedings in this cause mentioned, to wit: part of lot 7, in square 975, on the ground plan of the City of Washington, in said District, to Jane Hart, at and for the sum $1450, and that said purchaser has fully complied with the terms of sale:

It is, thereupon, this 11th day day of December, A. D. 1885, ordered, that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 11th day of January, A D. 1886.

Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to said last named day.

By the Court: A. B. HAGNER, Justice, &c.
True copy. Test: 50 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 10th day of December, 1885.

MARION V. JULIEN v. PHILIP A. JULIEN. } No. 9728. Eq. Doc. 25.

Application for divorce on the ground of desertion.

On motion of the plaintiff, by Mr. A B. Williams, her solicitor, it is ordered that the defendant, Philip A. Julien, cause his appearance to be entered herein on or before the first rule-day, occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. 50 Test: R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 10th day of December, 1885.

SUSAN G. CARTER v. CHARLES R. PLUMBE. } No. 26,521. At Law.

On motion of the plaintiff, by Mr. Dean, her attorney, it is ordered that the defendant, Charles R. Plumbe, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.
True copy. Test: 50 R. J MEIGS, Clerk

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court business. December 5th, 1885.

In the case of Job Barnard, Administrator of Isaac Cross, deceased, the Administrator aforesaid has, with the approval of the Court appointed Friday, the 8th day of January A. D. 1886, at 11 o'clock, a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 49 H. J RAMSDELL, Register of Wills.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Marquis Jose de Campo, late of Madrid, Spain, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 3d day of December next; they may otherwise by law be excluded from all benefit of the said estate,

Given under my hand this 3d day of December, 1885.

B. F. LEIGHTON,
E. E. HOLMAN, Solicitor. 49 Administrator.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Sitting in Equity. December 2, 1885.

FRANCIS F. BUTLER et al v MARY ANN BUTLER et al. } 9687. Eq. Doc. 25.

Edward J. Stellwagen, trustee appointed by decree of this Court in the above-entitled cause to sell the real estate in said proceedings described, to wit: sub-lot 3, in square numbered one hundred and sixty-three (163), in the City of Washington, District of Columbia, having reported to the Court that, after complying with the requirements of said decree, he offered for sale at public auction the aforesaid property on the 30th day of November, A D. 1885, and that Titian J. Coffey and Mary Ker Coffey, of the said City of Washington, became the purchasers thereof, at and for the sum of $8,245 00;

It is, by the Court, on the 2d day of December, A D. 1885, ordered that said sale be, and the same is, hereby ratified and confirmed, unless cause to the contrary be shown on or before the 2d day of January, A D. 1886.

Provided, a copy of this order be published in the Washington Law Reporter once a week for three weeks before said 2d day of January, A D. 1886.

A. B. HAGNER.
A true copy. Test: 49 R J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration on the personal estate of Guynilda H. Schley, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of December, 1885

49 CHARLES L. DU BOIS,
605 7th St., N. W.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Sitting in Equity. December 1, 1885.

ANN BEAN et al. v. JOSEPH HYMER et al } 1224. Eq. Doc. 8.

Upon consideration of the report of A. Thomas Bradley, trustee, filed herein, it is by the Court this 1st day of December, A. D 1885, ordered and decreed that the offer of John F. Donohue to purchase lot five in square seven hundred and seventy, as stated in said report, be hereby accepted, and that the sale of said lot to him be ratified and confirmed unless cause to the contrary be shown on or before the 1st day of January, 1886.

Provided a copy of this order be inserted in the Washington, Law Reporter, once a week for three successive weeks before said last mentioned day.

A. B. HAGNER.
True copy Test: 49 R. J MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Ignacio Montalvo y Calvo, late of Paris, France, deceased

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 2d day of December, next; they may otherwise by law be excluded from all benefit of the said estate,

Given under my hand this 2d day of December, 1885.

B. F LEIGHTON,
49 Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. December 2, 1885.

In the case of Calderon Carlisle, Administrator of Davis Richards, dec'd, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 8th day of January, A D. 1886, at 11 o'clock a m, for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day

Test 49 H J. RAMSDELL, Register of Wills.
No. 1740, A. D., 11.

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Legal Notices.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Rosa A Scull, late of Havana, Cuba, deceased

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 2d day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of December, 1885.
49 B. F. LEIGHTON,
Administrator.

THIS IS TO GIVE NOTICE
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Jose Suarez Argudin, late of Havana, Cuba, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of December, 1885.
49 B. F. LEIGHTON,
Administrator.

THIS IS TO GIVE NOTICE
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters of Administration on the personal estate of Conde de San Fernando de Penalver, late of Havana, Cuba, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber, on or before the 2d day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of December, 1885.
49 B. F. LEIGHTON,
Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business December 2d, 1885.

In the case of Samuel H. Walker, Adm'r of Wm T Hook, dec'd, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 8th day of January, A. D 1886, at 11 o'clock a m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 49 H. J. RAMSDELL, Register of Wills.
No. 1718. A. D., 11
A. B. DUVALL Solicitor.

THIS IS TO GIVE NOTICE
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Barbara Koch, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 5th day of December next; they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 5th day of December, 1885.
49 GEO. C. WALKER,
SIMON WOLF, Solicitor. Executor.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration on the personal estate of Joseph H Herron, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of December, 1885.
49. J. WHITLEY HERRON,
GEO F: GRAHAM, Solicitor. Star Office.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 1st day of December, 1885.

JULIA E. CALLAHAN
v.
FRANCIS R CALLAHAN. } No 9724 Equity Docket, 25.

Application for divorce on the ground of adultery and desertion

On motion of the plaintiff, by Mr. Daniel E. Cahill, her solicitor, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
True copy. Test: 49 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 4th day of December, 1885.

AMELIA V. HAMILTON
v
The UNKNOWN HEIRS of WILLIAM N. GRAHAM, dec'd } No. 9729. Eq. Doc. 25

On motion of the plaintiff, by Mr. John J Weed, her solicitor, it is ordered that the defendants, the unknown heirs of William N. Graham, deceased, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 49 R J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Louis Simon, late of Western Terrace, Nottingham, County of Nottingham, England, deceased,

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of November, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of November, 1885.
48 CHARLES E. FOSTER,
WM. G. HENDERSON, Solicitor. Administrator.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Joseph Steinberger, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of November, 1885.
46 TENIA STEINBERGER,
LEON TOBRINER, Solicitor Administratrix.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Manuel J. Gonzales, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 30th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of November, 1885.
CHARLES W. HENSHAW,
H. B. MOULTON, Solicitor. 49 Executor.

THIS IS TO GIVE NOTICE.
That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Conde de Gibacoa, late of Havana, Cuba, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of December, 1885.
49 B. F. LEIGHTON
Administrator.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

NELLIE F. PUMPHREY et al. v. ELIZABETH A. PUMPHREY et al. } 9410. Eq. Doc. 24

The trustees in the above-entitled cause, having reported that they have made sale of original lot 40, and lots 55 to 62, both inclusive, of their subdivision of original lots 41 and 42, in square No. 503, in the City of Washington, D. C., at prices aggregating $7,559.63, and upon the terms fixed by the decree of sale, and the said trustees having further reported an offer at private sale of $328.78, received by them for lot 1, in square south of square south of square 667, in said City, in accordance with said terms:

It is, by the Court, this 27th day of November, A. D. 1885, ordered, that the said sales made, be ratified and confirmed, and also that the said trustees be, and they hereby are authorized to accept said offer for lot 1, in square south of square south of square 667, at private sale, unless cause to the contrary hereof be shown on or before the 27th day of December, 1885.

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said last-mentioned date.

A. B. HAGNER.

A true copy. 48 Test: R. J. MEIGS, Clerk

THIS IS TO GIVE NOTICE,

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Wm Wallace Greenfield late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 22d day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of October, 1885.

E EMMA GREENFIELD,

GORDON & GORDON, Solicitors. 48 Executrix.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court business, December 11, 1885.

In the case of Bertha Schwartz, Executrix of Joseph Schwartz, deceased, the Executrix aforesaid has, with the approval of the Court, appointed Friday, the 29th day of January, A D. 1886, at 11 o'clock, a. m., for making payment and distribution under the Court's direction and control; when and where creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized with their claims against the estate properly vouched: otherwise the Executrix will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 50 H. J. RAMSDELL, Register of Wills.

ANSON S. TAYLOR, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 25th day of November, 1885.

REBECCA H. HILL and THE CONNECTICUT GENERAL LIFE INSURANCE COMPANY, v. JOHN C. TEN EYCK, MARY TEN EYCK, JULIA TEN EYCK, JANIE SAUNDERS and JULIA HILLHOUSE. } No. 9720. Equity Docket, 25.

On motion of the plaintiffs, by Messrs Charles D. Fowler and Samuel R. Bond, their solicitors, it is ordered that the defendants, John C. Ten Eyck, Mary Ten Eyck, Julia Ten Eyck, Janie Saunders and Julia Hillhouse, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER. Justice.

A true copy. Test: 48 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 25th day of November, 1885.

SARAH SNOWDEN v. H. CLAY JOHNSON et al. } No. 9716. In Equity.

On motion of the plaintiffs, by Mr. Neal T. Murray, her solicitor, it is ordered that the defendants, A. Howard Johnson and Ella V. Hickman, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.

A true copy. 48 Test: R. J. MEIGS, Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

ANNA ELIZA BARNARD et al v. WILLIAM RUSSELL WHITING et al. } 9537. Eq. Doc. 25.

Randolph Coyle the trustee in the above-entitled cause, having this day reported to the Court the sale by him on the twenty-first instant of the real estate involved in this cause, to John R. McLean, at and for the price of $22,600.00 to be paid in cash, upon the final ratification of the sale by the Court, without interest:

It is, by the Court, this 23d day of November, A. D. 1885 ordered that the sale so reported be, and the same hereby is, ratified and confirmed, unless cause to the contrary thereof be shown on or before the 23d day of December, A D. 1885.

Provided, that a copy of this order be published in the Washington Law Reporter, once a week for three successive weeks before said last-mentioned date.

A. B. HAGNER.

A true copy. Test: 48 R. J MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. November 27th, 1885.

In the case of George W. Brown, Adm'r of Maurice N. Grossmann, deceased, the Adm'r aforesaid has, with the approval of the court, appointed Friday, the 18th day of December A. D. 1885, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 48 H. J. RAMSDELL, Register of Wills.

HENRY WISE GARNETT, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. December 11, 1885.

In the matter of the Estate of Andrew K. Long, late of the U. S. Navy, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Elizabeth Foster Long.

All persons interested are hereby notified to appear in this Court on Friday, the 8th day of January next at 11 o'clock a. m., to show cause why Letters of Administration on the Estate of the said deceased should not issue as prayed. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: 50 H. J. RAMSDELL, Register of Wills.

SAMUEL B. GRIFFITH, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 29th day of November, 1885.

EDMUND FITZGERALD v. MATILDA GRAHAM et al. } No. 9602. Eq. Doc 25.

On motion of the plaintiff, by Messrs. Hine & Thomas, his solicitors, it is ordered that the defendant, Sarah Graham, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise this cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.

True copy. Test: 48 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Wm. Pinkney Brooks, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of November, 1885.

48 WM. E. CLARK.

GORDON & GORDN, Solicitors. Administrator.

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Washington Law Reporter

WASHINGTON - - - - - December 26, 1885.

GEORGE B. CORKHILL - - - EDITOR

THE Supreme Court of Massachusetts have before them in the case of the petition of the publishers of the *Daily Law Record* v. John Lathrop, reporter of the decisions of the Supreme Court, for a writ of mandamus to compel him to allow them to publish in full the current opinions of the Supreme Court, the question as to the exclusive right of the reporter to the publication of these opinions. As is well known, the real defendant is this suit is the firm of Little, Brown & Co., claiming that under the contract with the State—which provides that the reporter shall not publish, or furnish for publication, the opinions of the Supreme Judicial Court—the defendants have the exclusive right to publish the opinions. The plaintiffs' counsel insist that the opinions are public records, and that every one was entitled to know the law of the land, and that there could be no copyright in the opinions, and that this attached only to the reporter's preparation of the case. The defendants relied wholly on their special contract with the legislature, and claimed that the general publication of the opinions injured the sale of the regular reports.

From the present indications of the publication of reports of decisions of the various courts in this country, and the numerous methods in shape of abstracts, monthly parts, and compilations it seems probable the time of cheap reports is here, and the ownership of a copyright under the decision of the courts will be of no value. It will be a matter of no surprise if some enterprising publishing house will offer weekly ten cent editions of the reports of the Supreme Court of the United States—ten issues to make a volume, and each subscriber to have a steel engraving of the judges of the court worth five times the cost of the volume. Law literature is certainly being pushed in the market, and the old maxim, "*ignorantia legis neminem excusat,*" bids fair to have some practical application.

THE best illustration of the practice of taking satisfaction out of adverse decisions by "swearing" at the court is to be found in a late pamphlet issued in this District, entitled "A Review of the Opinion of Judge W. M. Merrick in the case of Samuel Strong v. The District of Columbia, by one of the Referees." The learned reviewer closes his thirty-one page pamphlet by saying:

"I have only to add, in conclusion, that the court, in the interest of an 'innocent public'—to use the language of the learned judge—may make illegal decisions in order to prevent Strong from obtaining the justice to which he is entitled by the law; but such decisions, in my judgment, will only deepen and widen the conviction now entertained by many, and expressed by some, that the time has arrived when the judicial system of the District should be reorganized, and the courts receive an infusion of younger blood, if not of more legal ability."

The country is always going to ruin when men are defeated in their law suits, and any court that decides adversely to a claim, in the opinion of the claimant at least, and occasionally in that of his attorney, should be at once reorganized and constructed on the basis of deciding in his favor. The tribunal to which this pamphlet is addressed is powerless to render any judgment or to prove of any assistance in the case.

KING Krom Pra Ranjaway Bovara Sthan Mongol of Siam is dead, we are sorry to have to announce.

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Supreme Court District of Columbia.

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

THE DISTRICT OF COLUMBIA *vs.* OYSTER.
LAW. No. 26,225.

SAME *vs.* EMMERT.
LAW. No. 26,213.

SAME *vs.* DALY.
LAW. No. 26,264.

Decided October 26, 1885.
The CHIEF JUSTICE and Justices JAMES and MERRICK sitting.

The license law of the District of Columbia provides that "produce dealers shall pay annually $25, and every person whose business it is to buy and sell produce, fish, meats and fruits from wagons and carts shall be regarded as a produce dealer," with this qualification, "That no additional license shall be required from produce dealers for selling meat." *Held*, That within the meaning of the statute, one who brings butter and eggs to vend in the market, is as much a produce dealer as if he were bringing only cereals or fruits, or what is ordinarily called "garden stuff;" also, that one who sells meats only is not, within the statute, a produce dealer.

Informations for selling without license.

THE CASE is stated in the opinion.

A. G. RIDDLE for plaintiff.

WILLIAM A. COOK and LEIGH ROBINSON for defendants.

Mr. Justice MERRICK delivered the opinion of the court.

I have been requested to deliver the opinion of the court in these license cases.

The cases against Oyster and Daly were cases where the information had been filed against the party as a produce dealer, the charge being that he was engaged in the sale of butter and eggs, and the question was raised whether butter and eggs constitute "produce" within the meaning of the law.

There is very little to be said with reference to that matter except to refer to what has been understood to be the common usage and practice of society and the sense in which the word "produce" has been used. The argument at the bar was, as against the information, that produce meant only those things which were the product directly of the soil, such as cereals and fruits, as distinguished from those things which were the product of human industry, and not derived from, but directly connected with, the product of the soil.

But the common parlance of the country, and the common practice of the country, have been to consider all those things as farming products or agricultural products which had the *situs* of their production upon the farm, and which were brought into condition for the uses of society by the labor of those engaged in agricultural pursuits, as contradistinguished from manufacturing or other industrial pursuits.

The product of the dairy or the product of the poultry yard, while it does not come directly out of the soil, is necessarily connected with the soil and with those who are engaged in the culture of the soil. It is, in every sense of the word, a part of the farm product. It is depended upon and looked upon as one of the results and one of the means of income of the farm, and in a just sense, therefore, it may be considered produce.

The word "produce" has no definite, exact and technical meaning. It may be used in a larger or more restricted sense. But we must look to what the habits and usages of society are, and what has been the practice with regard to it, so as to give an interpretation to this word which is not a technical one under the law. And in that aspect of it the court is at no difficulty in determining that, in their judgment the words "produce dealer" as used in the license law of the District of Columbia, which says that "produce dealers shall pay $25 annually, and every person whose business it is to buy and sell produce, fish, meats and fruits from wagons and carts, shall be regarded as a produce dealer," apply to one who brings eggs and butter to vend in the market as much as to one who brings only cereals or fruits or what is ordinarily called "garden stuff."

We therefore shall remand the cases against Oyster and Daly to the police court in order that they may be proceeded with to judgment.

The case against Emmert is an information against a party for selling bacon, hams, dried meat and other meats of that

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sort, which are not the meat of animals slaughtered just before being sold, but are cured meats, and the question there is whether the party is liable to a license as a produce dealer.

While the clause in the law says that "Produce dealers shall pay annually $25, and every person whose business it is to buy and sell produce, fish, meats and fruits from wagons and carts shall be regarded as a produce dealer," it also contains this qualification, "that no additional license shall be required from produce dealers for selling meat."

That seems simply to indicate, not that the selling of meat is characteristic of a produce dealer, but that the produce dealer who gets his license as such, has the further privilege, or a sort of grace and favor extended to him, within the limited amount mentioned in the statute, because it says that he shall pay no additional license where the capital invested is less than $1,000, showing that the idea was to make the produce dealer a privileged character to the extent of his small dealings, that he might supply the necessities of society in having at his stall not only the product of the garden and the product of the stream, as fish and fruits, but that he might also sell a limited quantity of bacon and the like, with dried beef and other things which go to make up the complement of a produce dealer's establishment, without thereby depriving himself of the character and privileges of a produce dealer.

The word meat as used in connection with the butcher's employment, is used in its very largest sense and without any restriction as to the quantity which he is privileged to sell.

The authorities do not use, in the licenses for butchers, or in the regulations about butchers, the same term as was used in the statute of the United States, "butchers' meats," which would exclude the dried meats from the occupation of the butcher; but they say that the butcher and every person whose business it is to sell meats from market stalls, shall be regarded as a butcher. There they have defined a butcher in particular language. Any meat sold at a market stall comes within the function of a butcher and belongs to his office, and his right to sell shall be determined by the right of the butcher to sell meats.

So far as the license of the butcher is concerned, the law goes on to provide that he shall pay certain definite sums in the Western Market, the Eastern Market, in the Georgetown Market and in the Northern Market, for the occupation of his stall, but it is to be paid not as a license, but as a rent for the use and occupation of that stall. A butcher pays no license as license. He pays part of the revenues of the city as a rental for the occupation of a portion of the ground belonging to the city in these several market houses.

So far as the Central Market is concerned, there is no provision in the statute requiring him to pay any rental. That seems to be provided for by the regulations of the market itself and in the obligation of the market company to pay a certain annual stipend to the District of Columbia. The particular corporation, holding that market, is entitled to the rentals of that market, as the city owning these other markets enumerated is entitled to the rentals of the stalls of those markets. It is only in the character of rentals, and not in the character of licenses that the butcher makes any payment at all.

Finding then that the traverser Emmert deals, according to the information, only in meats, and dealing in meats of any sort, whether fresh or cured meats being defined to be the thing that characterizes the trade of a butcher as declared in the 15th paragraph of the statute, the court is constrained to say that he does not come within the characteristics of a produce dealer who has to have a license and, as there is no specific license assigned to a butcher in the Central Market, he must go acquit of this information.

THE UNITED STATES *vs.* CARRIE B. EVANS.

Decided October 19, 1885.
The CHIEF JUSTICE and Justices JAMES and MERRICK sitting.

LAW. No. 23,537.

The provision of United States Revised Statutes, section 1765, which forbids officers or employees of the United States, whose pay is fixed by law or regulations, from receiving additional pay, etc., applies only to cases where the regular and the

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extra compensations are given for the discharge of duties or rendition of services incompatible with each other.

STATEMENT OF THE CASE.

George D. Benjamin, whilst occupying the position of superintendent or foreman in the service of the United States, under O. E. Babcock, colonel of engineers in charge of the public buildings and grounds in the city of Washington, was appointed, by the Secretary of War, disbursing agent of the United States, for disbursing the money appropriated by Congress for the construction of the east wing of the new State, War and Navy Department building; and his compensation was fixed at three-eighths of one per cent. upon all moneys disbursed. His salary as superintendent or foreman was $2,000 a year. He executed a bond with sureties for the faithful performance of his duties as such disbursing agent, and entered upon and continued in the discharge of his duties as disbursing officer from May 21, 1875, until March 15, 1877, during which time he disbursed the sum of $559,798.99.

During the period in which he was discharging his duties as disbursing agent, he discharged also all the duties as superintendent or foreman and was paid therefor his salary at the rate of $2,000 a year. At the same time, in his capacity as disbursing officer, he made out vouchers in his own favor at the rate of three-eighths of one per cent. on the sums disbursed by him, which vouchers were duly approved by Col. O. E. Babcock, who was in charge of the construction of the building. For the amount of these vouchers he gave himself credit in his account with the Government, and they were allowed by the accounting officers of the Treasury Department for a time, but were subsequently disallowed. The credit thus taken by Benjamin amounted in the aggregate to $3,071.05.

To recover this sum, this action was instituted against Mrs. Evans, who is the administratrix of one of the sureties on Benjamin's bond. The claim of the Government was that the three-eighths of one per cent. retained by Benjamin, was "additional compensation" within the meaning of United States Revised Statutes, section 1765, and could not, therefore, be allowed him, he being, at the time he disbursed the money, in receipt of a compensation as superintendent or foreman under the engineer officer in charge of public buildings and grounds.

The case was submitted to the court below on an agreed statement of facts, substantially as above, and judgment was rendered in favor of the defendant, from which judgment the plaintiff appealed.

A. S. WORTHINGTON and RANDOLPH COYLE for the United States.

ENOCH TOTTEN for defendant.

Mr. Chief Justice CARTTER delivered the opinion of the court.

If the subject before us were confined to the terms of the bond and the conduct of the parties with reference to it, it would be very difficult to imagine where an issue existed. The appointment was duly made; this bond was executed; Benjamin received all this money and paid it all out, and received three-eighths of one per cent. commission for doing it. It would be very difficult to find any delinquency in connection with the conduct of this trustee of the fund or of his sureties. It is not alleged, in point of fact, that there was any. He was employed contemporaneously with this appointment as disbursing agent of the War Department, as a superintendent of laborers on the public grounds. He discharged his duties apparently with satisfaction to his employer and received his pay; but it is urged here that inasmuch as he did so, he ought not to receive it again as a disbursing officer; that the statute providing against duplicate compensation for labor or for salary intervenes to prevent it.

There is nothing disclosed in this declaration nor in the agreed statement of facts that intimates that these duties were incompatible with each other and must be carried on at the expense of the one or the other. There is nothing averred in the declaration or assigned in the argument that the separate duties discharged by this person were derivative one from the other, a protraction of the other, or correlative with each other; a

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distorting for the purposes of payment of one office into two.

It was that evil that Congress had in contemplation and provided against; and, as is said by Chief Justice Taney, if the duties are not incompatible with each other, there is no law prohibiting the duplication of duties, and upon that question we are all agreed. From the time of the decision in Converse *vs.* United States, 21 How., 470, where the question was fully examined by Chief Justice Taney, down to the last echo on that subject in the case of Meigs *vs.* United States, 19 Court of Claims, 497, that doctrine has traveled down through the courts to this hour.

We therefore affirm the decision of the court below.

For myself, I wish to give another reason which I think is perfectly unanswerable against the right of the Government to recover in this case. In this, not having deliberated with my brethren, I do not wish to be understood as giving their convictions.

This is an action brought against the administratrix of the surety upon a bond conditioned for the performance of the obligation of that bond. How is it that the surety is to be made responsible under his covenant for the performance of the obligation of this bond, that this man should not receive any money anywhere else? Is he to be held responsible because the plaintiff, through the instrumentality and agency of its superintendent of public grounds, employed this man as a laborer and paid him? The proper answer would be: Well, if you paid him wrongly, recover it back by pursuing him. But he has performed his covenants under the bond upon which you bring your action here. He has paid out all of this money, and you agreed with this surety that under this bond he was entitled to retain three-eighths per cent. and you have no right now to ask the sureties to indemnify you for your blunders in paying him for doing work somewhere else where he ought not to be paid. The very assertion of the bond as a valid instrument, the assertion of the appointment as a valid appointment, the publication of the terms of that appointment, and especially the compensation for the disbursement of the money, ought to estop the Government from saying to the sureties, "We made a mistake in employing him elsewhere; we ought not to have paid him for that." Very well, collect it back from him. You sue these sureties upon the letter of their obligation asserting its validity. They meet you and say that he has honestly disbursed every dollar of this money and was entitled to the three-eighths per cent. by doing so under the terms of the appointment which the bond pursued and that you are estopped from denying that he was entitled to it. Where is the dollar that he received that his contract did not permit him to receive? You are pursuing a surety then on what claim? Why the claim that a man cannot receive compensation from the Government for divergent duties? Very well, collect it back, but do not collect it out of the sureties upon this bond, the covenants of which have all been kept.

To my mind, this is an unanswerable reply to any claim on the part of the Government set up against the sureties alone. It is not an action against the principal on the bond.

The judgment below, which was for the defendant, is affirmed.

Myers' Federal Decisions.

We are in receipt of Volume VIII of Myers' Federal Decisions. The subject of this volume is Contracts (Contracts to Conversion). All of the first twelve volumes have now been issued with the exception of volume XI, which will soon appear. The certificate of approval, as to the digest of cases in this volume, is from Mr. Edmund H. Bennett, Boston, Mass.

The subject of contracts is considered under ten distinct heads, each having its own proper sub-heads. The ten divisions are as follows:

Contracts:

1. In General. What Constitutes a Contract. Parties. 2. Kinds of Contracts. 3. Consideration. 4. Validity. 5. Construction and Interpretation. 6. Performance and Breach. 7. Alteration of Contracts. 8. Contracts as Affected by the Statute of Frauds. 9. Right of Action; Accrues, when. 10. Measure of Damages.

Each head is exhaustively considered. The volume, as a whole, excels in a great degree the numerous text books on the subject. It is fully equal to those which have preceded

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it, and will be in daily use in the lawyer's office. In Myers' Federal Decisions, the publishers—The Gilbert Book Co., St. Louis, Mo.—are giving to the profession a most valuable work, and they fully deserve the encouragement and assistance of all lawyers who can appreciate good law books. The mechanical execution of all of these volumes is of the best character.

We think that we can confidently repeat what we have already said heretofore, that he who gets the first volume will get the last.

"SURELY, your honor, "yelled the young lawyer, showing off with great enthusiam in his first case, "surely I do not need to argue on such a simple question. My client has not only right but law upon his side, and I know, your honor, that in thus dwelling upon a point so self-evident I am performing an unnecessary work, for I know that no court of equity can possibly hold such a monstrous proposition."

The old judge stuck his chin in his breast, looked over the gold rim of his spectacles and gazed blandly on the perspiring lawyer.

"It will this afternoon."

And the lawyer wilted.

"AND you pretend to say," remarked a lawyer to a witness, "that you remember the exact words this man said to you ten years ago?"

"I do."

"Well, if my memory serves me, I met you at Saratoga about five years ago, and I should like to know if you can swear to any expression which I then made."

"I can."

"Now, Mr. J., I want you to remember that you are under oath. Now, under oath, you swear that you can quote with great accuracy a remark I made to you at Saratoga five years ago?"

"I can."

"Well, what was it?"

"You met me in the hotel corridor."

"Yes, quite correct."

"And you shook hands with me."

"Naturally, I did."

"And you said to me, 'Let's go and take something.'"

The crier of the court had to call silence for ten minutes, and the lawyer confessed that the witness had a remarkable memory.

COWBOY.—Stranger, there's some good men in this gang, you betcher life. Do you see that quiet, inoffensive little man over there? You wouldn't think to look at him, that he'd killed his dozen or more men, would you?"

Tenderfoot.—Goodness gracious, no! Has he?

Cowboy.—You bet, pard; he's a doctor."

Tenderfoot.—"Oh, I see."

The Courts

U. S. Supreme Court Proceedings.

DEC. 21, 1885.

Creed F. Bates, of Chattanooga, Tenn.; Hugh Crea, of Decatur, Ill.; Walter Reeves, of Streator, Ill., and Richard J. Bright, of Indianapolis, Ind., were admitted to practice.

No 86. John F. Coyle v. Henry S. Davis et al.; decree affirmed with costs. Opinion by Mr. Justice Blatchford.

No. 61. The Liverpool and London and Globe Insurance Company v. Amelia A. Gunther, administratrix, etc., et al.; judgment reversed with costs and cause remanded with directions to grant a new trial. Opinion by Mr. Justice Matthews.

No. 951. Hattie A. Burnett v. The United States; appeal from the Court of Claims; judgment affirmed. Opinion by Mr. Justice Harlan.

No. 65. The Winchester and Partridge Manufacturing Company v. Edward Creary et al.; judgment reversed with costs, and remanded for further proceedings to be had therein in conformity with the opinion of this court. Opinion by Mr. Justice Harlan.

No. 69. Josiah Fisk v. The Police Jury of Jefferson Left Bank;

No. 70. The State of Louisiana, ex rel. Josiah Fisk, v. The Police Jury of Jefferson Left Bank; judgments reversed with costs and causes remanded. Opinion by Mr. Justice Miller.

No. 71. The State of Louisiana, ex rel. Samuel R. Stewart, v. The Police Jury of Jefferson Left Bank; judgment affirmed with costs. Opinion by Mr. Justice Miller.

No. 555. Robert C. Hewett v. Lewis S. Filbert et al; dismissed with costs. Opinion by Mr. Chief Justice Waite.

No. 668. The Western Union Telegraph Company v. George F. Hall; motion to dismiss denied.

No. 933. P. P. Pickard v. Pullman's Southern Car Company.

No. 934 The State of Tennessee v. George K. Whitworth, trustee, etc.;

No. 935. The State of Tennessee v. George K. Whitworth, trustee, etc.;

No. 936. The State of Tennessee, v. Pullman Southern Car Company; motion to advance granted and causes set for hearing on the third Monday in January next at the foot of the call.

No. 106. The County of San Mateo v. The Southern Pacific Railroad Company; dismissed, each party to pay their own costs in this court. Opinion by Mr. Chief Justice Waite.

No. 1034. The Union Pacific Railroad Company v. The United States; advanced and assigned for argument on the third Monday of January after No. 936.

No. 924. Joseph C. Mackin et al. v. The United States; advanced and assigned for argument on third Monday in January after No. 1035.

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No. 1234. George G. Dent et al. v. William Ferguson et al.; docketed and dismissed with costs.

No. 464. The County of Santa Clara v. The Southern Pacific Railroad Company;

No. 619. The County of San Bernandino v. The Southern Pacific Railroad Company;

No. 620. The People of the State of California v. The Northern Railroad Company;

No. 621. The People of the State of California v. The Central Pacific Railroad Company;

No. 622. The People of the State of California v. The Southern Pacific Railroad Company; advanced and assigned for argument.

No. 907. The Eureka Lake and Yuba Canal Co. (consolidated), v. The Superior Court of Yuba et al.; submitted.

No. 1157. John F. Fletcher et al. v. Hamlet, Bliss & Elliott; submitted.

No. 5. Original. Ex parte, in the matter of Halloon Parker, petitioner; motion for rule submitted.

No. 953. John Branscom et al. v. John W. Wood; motion to dismiss submitted.

No. 82. William H. Lee v. Eos Johnson; decree reversed with costs. Opinion by Mr. Justice Field.

No. 90. Daniel McClure v. The United States.

No. 1034. The Union Pacific Railroad Company v. The United States; motions to remand causes to the Court of Claims. Opinions by Mr. Chief Justice Waite.

No. 1143. James Gibbons v. The District of Columbia; submitted under twentieth rule.

No. 107. The Iron Silver Mining Company v. Walter S. Cheeseman et al.; argument concluded.

Adjourned until Monday, January 4, 1886.

SUPREME COURT OF THE DISTRICT OF COLUMBIA

IN EQUITY.—New Suits.

Dec. 19, 1885.

9745 Alexander M. Proctor v. Nathan W. Fitzgerald et al. Judg't creditors' bill. Com sol, W. F. Mattingly.

9746. Hosea B. Moulton, Adm'r, v. George Bancroft et al Judg't creditor's bill. Com sol, H. B. Moulton.

Dec. 21, 1885.

9747. John Webster v. The B. & P. R. R Co Injunction. Com sol. W. A. Cook.

Dec. 22, 1885.

9748. Pierce Shoemaker v. Wm. B. Johnson et al. To remove cloud off title. Com sol, J. J. Darlington.

Dec. 23, 1885.

9749. Eliza J. McGeogh v. Walter B. Williams et al. Com sols, Weed and Merriman.

9750. Christian Heurich v. Wm. Lewis et al. Judgment creditor's bill. Com sol, Leon Tobriner.

CIRCUIT COURT.—New Suits at Law

Dec. 14, 1885.

26558. Windsor Cloak and Suit Man'f'g Co. v. Joseph Herzog. Acct. $173 50. Piffs atty, L. Tobriner.

26559 The Anglo-American Ins. Co. v. Joseph R. West et al. Piffs atty, W. A. Meloy.

26560. John T. Arms v. Wm. C. Hill. Note, $14,513.06. Piffs atty, J. G. Payne.

26561. Geo A. Arms v. J. Donald Cameron. Acct, $2550. Piffs atty, J. J Weed,

26562 Abraham Kaufman v. The District of Columbia. Damages, $3,000. Piffs atty, L. Tobriner.

26563. Mary B. Morse v. The U. S Electric Lighting Co. Damages, $10,000. Piffs atty, M. F. Morris,

26564. M. S. Shapleigh & Co. v. Joseph Herzog. Acct., $.83.90 Piffs attys, Abert & Warner.

Dec. 16, 1885.

26565. Weller & Repetti v. Daniel C. Harrison. Notes and acct, $158.30. Piffs attys, Edwards & Barnard.

26566. Thurber, Whyland & Co. v. Elphonzo Youngs. Acct, $183.77 Piffs atty, W. A. McKenney.

26567. Catharine Boteler v. Wm W. White. Note, $1225. Piffs atty, J. W Ross.

26568 Willie S. Hoge v. Frank E. Middleton. Notes, $615.98. Piffs atty, C. G. Lee.

26569. Robert I. Fleming v. D. W. Bliss. Notes, $490.32. Piffs atty, J. M. Johnston.

Dec. 17, 1885.

26571. Thomas M. McKee v. Thomas I Gant et al. Judg't of Justice Taylor $91.95. Piffs atty, R. D. Mussey.

26572. The Real Estate Title Co., of Wash., D. C. v. Jas. W. Ginnaty Judg't of Justice O'Neal, $30. Piffs atty, John Ridout.

26573. Beniamin P. Snyder et al. v. Herbert P. Pillsbury: Damages, $500. Piffs atty, R. R. Perry

26574. White, Hentz & Co. v. Thomas B. Stahl. Replevin. Piffs atty, E. H. Thomas.

26575. Wilcox & Gibbs Sewing Machine Co. v. Mary C. Carr. Replevin. Piffs atty, J. J. Weed.

Dec. 21, 1885.

26576 Noah Walker & Co. Sellman K. Hannegan. Acct., Piffs atty, A. C Bradley.

26577. Henry Rosendale v. Louis Beyer. Judgment of Justice Taylor, $39.40. Piffs atty, E. H. Thomas.

26578. Isabella G. Wolowska v Campbell Carrington. Replevin. Piffs atty, Browne and Murdock.

26579. Conrad Hamp v. Samuel T. Luckett. Replevin. Piffs atty, Mills Dean.

Dec. 22, 1885.

26580. Joseph H. Galer v. The Penn. R. R. Co. et al. Damages, $10,000. Piffs attys, Lincoln and White.

26581. Laura V. Fort v. Daniel M. Thompson. Issues from probate.

Dec. 23, 1885.

26582. Francis M. Tate v. Joshua Hill. Ejectment. Piffs attys, Kimball and Darlington.

26583. C. C. Anderson v. Same. Eject. Piffs attys, Same

PROBATE COURT.—Justice Hagner.

Dec 24, 1885.

Estate of Eliza Wilson. Receipts of legatees filed.

Estate of Wm E Schoenborn. Order appointing January 7 next for hearing of exceptions.

Estate of James F. Wollard. Exceptions to administrators' account set for hearing on January 7, 1886.

Estate of Mary E. Foller. Petition of Elizabeth L. Foller for leave to transfer bonds filed.

Estate of Wm. S. Buchley. Order of court allowing counsel fees.

Estate of Thomas L. Hume. Order permitting guardian to make investment of $4,625.

Estate of Jane L Lmith Will admitted to probate and record, petition of Thomas H Kernan declining to act as executor and ordered that letters of administration c. t. a. issue to Charles H Fishbaugh upon filing bond in the sum of $25,000

Estate of John H. McLaren. Order publication issued.

Estate of G. H. Schley. Inventory of personalty returned

JAMES L. ANDEM,

STENOGRAPHER, U. S. COMMISSIONER,

EXAMINER IN CHANCERY,

418 SECOND STREET, N. W.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 23d day of December, 1885.

PIERCE SHOEMAKER v. WILLIAM B. JOHNSON et al. } No. 9748. Eq. Doc. 25.

On motion of the complainant, by Mr J. J. Darlington, his solicitor, it is ordered that the defendants, Edward O. Hatton, Harry D. L. Hatton, Robert Vincel, Harry G. Vincel, Robert J Adams and William D. Vincel, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. WM. M. MERRICK, Justice.

A true copy. Test: 52 R J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 23d day of December, 1885.

CHARLES C. ANDERSON v. JOSHUA HILL. } No, 26583. At law.

On motion of the plaintiff, by Mr. Kimball, his attorney, it is ordered that the defendant, Joshua Hill, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.

A true copy. 52 Test: R. J. MEIGS, Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. December 24th, 1885.

In the matter of the Estate of John H. McLaren, late of the City of Eastport, State of Maine, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Jerome F. Manning.

All persons interested are hereby notified to appear in this court on Friday, the 15th day of January next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 52 H. J. RAMSDELL, Register of Wills.
ROBERT CHRISTY, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business. December 26th, 1885.

In the matter of the Estate of Sam'l S. Howison, late of the District of Columbia, deceased.

Application for the granting of Letters of Administration on the estate of the said deceased has this day been made by William A. Gordon, assignee of H. D. Cooke.

All persons interested are hereby notified to appear in this Court on Friday, the 22d day of January next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: 52 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. December 24, 1885.

In the case of Harriet A. Ford, Administratrix of Charles M. Ford, dec'd, the Administratrix aforesaid has, with the approval of the court, appointed Friday, the 29th day of January, A. D. 1886, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized with their claims against the estate properly vouched; otherwise the Administratrix will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test 52 H. J. RAMSDELL, Register of Wills.
EDWARDS & BARNARD, Solicitors. No. 1514.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business Letters of Administration on the personal estate of Cornelius Donovan, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 18th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of December, 1885.
52 MATTHEW G. EMERY, JR.,
W. K. DU HAMEL, Solicitor. Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. December 24, 1885.

In the case of Henry M. Baker, Executor of Mattie Lathrop, dec'd, the Executor aforesaid has, with the approval of the court, appointed Friday, the 15th day of January, A. D. 1886, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 52 H. J. RAMSDELL, Register of Wills.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 23d day of December, 1885.

FRANCIS M. TALTY, Trustee, v. JOSHUA HILL. } No. 26562. At law.

On motion of the plaintiff, by Mr. Kimball, his attorney, it is ordered that the defendant, Joshua Hill, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.
True copy. Test: 52 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE,

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Patrick J. Durkin, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of December, 1885.
BENJAMIN F. RITTENHOUSE,
GORDON & GORDON, Solicitors. 52 Executor.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Joseph Steinberger, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of November, 1885.
48 TENIA STEINBERGER,
LEON TOBRINER, Solicitor. Administratrix.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration on the personal estate of Joseph H Herron, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of December, 1885.
49. J. WHITLEY HERRON,
GEO F. GRAHAM, Solicitor. Star Office.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Manuel J. Gonzales, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of November, 1885.
CHARLES W. HENSHAW,
H. B. MOULTON, Solicitor. 49 Executor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court business. December 5th, 1885.

In the case of Job Barnard, Administrator of Isaac Cross, deceased, the Administrator aforesaid has, with the approval of the Court appointed Friday, the 8th day of January A. D. 1886, at 11 o'clock, a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 49 H. J. RAMSDELL, Register of Wills.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 16th day of December, 1885.

HENRY BERGLING et al. v. JOHN ARDESSAR } No. 9739 Eq. Doc. 25.

Bill to reform a deed.

On motion of the plaintiffs, by Mr. Leon Tobriner, their solicitor, it is ordered that the defendant, Francis Prott, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.

A true copy. Test: 51 R. J. MEIGS. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

GERTRUDE F SMITH v. ELIZABETH SMITH, Trustee, et al. } No. 9331. Eq Doc. 25.

The trustee in this cause, having reported to the Court that he has received from John A. Prescott, an offer of purchase of lot 8 in square 198, in the City of Washington, D. C., at the price of $8,600:

It is, ordered that said offer be accepted by the trustee, and said premises sold to said Prescott, unless cause to the contrary be shown on or before the 16th day of January, 1886.

Provided, that a copy of this order be published in the Law Reporter once a wbekn for three weeks before said day.

By the Court. A. B. HAGNER, Justice.

A true copy. Test: 51 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of fhe District of Columbia, holding a Special Term for Orphans' Court business. Letters of Administration on the personal estate of John Thomas Newton, late of the District of Columbia, deceased.

All persons having claims against the said decesed are hereby warned to exhibit the same with the vouchers thereof to the subscriber on or before the 17th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of December, 1885.

51 ADELA I. NEWTON.

HAGNER & MADDOX, Solicitors. Administratrix.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Sitting in Equity. December 18, 1885.

THOMAS Y. CONLEY et al. v. GEORGE SKAGGS et al. } 771. Equity Docket 8.

Richard T. Morsell, trustee in this cause, having reported that Charles A. McEuen, with whom he was, by the decree in this cause passed on the 4th day of December, 1885, authorized to contract for the sale of the property mentioned in the original decree in this cause, has made deposit of $50.00 on account of said purchase, and has assigned his purchase to John H Ketcham:

It is, by the Court, this 18th day of December, 1885, ordered that said sale be, and hereby is ratified and confirmed unless cause to the contrary be shown on or before the expiration of thirty days from the date thereof.

Provided a copy of this order be inserted ih the Washington Law Reporter once in each of three successive weeks before the expiration of said thirty days.

A. B. HAGNER.

A true copy. Test: 51 R. J MEIGS, clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Holding a Special Term for Orphans' Court Business. December 4th, 1885.

In the matter of the Will of Timothy Sands, late of the District of Columbia, deceased.

Application for the probate of the last Will and Testament of said deceased, dated October 27th, 1885, and for Letters Testamentary on the Estate of the said deceased, has this day been made by John D. Croissant and Mary E. Davis, two of the Executors.

All persons interested are hereby notified to appear in this court on Friday, the 8th day of January next at 11 o'clock a m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: 49 H. J. RAMSDELL, Register of Wills.

WM. A. COOK, Solicitor.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court Business. December 18th, 1885

In the case of Mary E Wollard and Charles F. Wollard, Administrators of James F Wollard, deceased, the Executor aforesaid has, with the approval of the Court appointed Friday, the 8th day of January, A. D. 1886, at 12 o'clock m for making payment and distribution under the court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrators will take the benefit of the law against them. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 51 H. J. RAMSDELL, Register of Wills.

D W GLASSIE, Solicitor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Adaline McIntire, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of December, 1885.

EDWIN A. McINTIRE.

50 Executor, 918 F Street, N. W.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Alfred Edelin, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of November, 1885.

ARTHUR A. BIRNEY,

50 Administrator.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Francis P. Hughes, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 8th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of December, 1885.

50 JENNIE A. HUGHES,

EDWVRDS & BARNARD, Solicitors. Administratrix.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

ANDERSON et al. v. ANDERSON et al. } Equity. No. 9620.

Watson J. Newton, the trustee in the above entitled cause, having reported that he has received an offer of $925 for the real estate in the proceedings set out, from Frank M. Green. It is this 5th day of December, 1885, ordered that the offer be accepted and that the sale to the said Frank M. Green, be and is hereby ratified and confirmed unless cause to the contrary be shown on or before the 5th day of January, A D. 1886.

Provided a copy of this order be published once a week for three successive weeks in the Washington Law Reporter and in th Evening Star before said last date.

By the Court. A B. HAGNER.

A true copy. Test: 49 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of Washington, D. C., has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Emeline M. Morse, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of December next; they may otherwise by law be excluded from all benefit of the said estate

Given under my hand this 5th day of December, 1885.

49 ALICE H. MORSE, Administratrix.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Rosa A Scull, late of Havana, Cuba, deceased

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 2d day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of December, 1885.

49 B. F. LEIGHTON, Administrator.

THIS IS TO GIVE NOTICE:

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters of Administration on the personal estate of Conde de San Fernando de Penalver, late of Havana, Cuba, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 2d day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of December, 1885.

49 B. F. LEIGHTON, Administrator.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Sitting in Equity. December 1, 1885.

ANN BEAN et al. v. JOSEPH HYMER et al. } 1224. Eq. Doc. 8.

Upon consideration of the report of A. Thomas Bradley, trustee, filed herein, it is by the Court this 1st day of December, A. D. 1885, ordered and decreed that the offer of John F. Donohue to purchase lot five in square seven hundred and seventy, as stated in said report, be hereby accepted, and that the sale of said lot to him be ratified and confirmed unless cause to the contrary be shown on or before the 1st day of January, 1886.

Provided a copy of this order be inserted in the Washington, Law Reporter, once a week for three successive weeks before said last mentioned day.

True copy Test: 50 A. B. HAGNER. R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a special term for Orphans' Court business, December 11, 1885.

In the case of Bertha Schwartz, Executrix of Joseph Schwartz, deceased, the Executrix aforesaid has, with the approval of the Court, appointed Friday, the 29th day of January, A D. 1886, at 11 o'clock, a. m., for making payment and distribution under the Court's direction and control; when and where creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized with their claims against the estate properly vouched: otherwise the Executrix will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 50 H J. RAMSDELL, Register of Wills. ANSON S. TAYLOR, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

MARY J. YOUNG, By her next friend, v JANE HART et al } Fquity. No 9694.

The trustee, Samuel Maddox, having reported to the Court that he has sold the real estate in the proceedings in this cause mentioned, to wit: part of lot 7, in square 975, on the ground plan of the City of Washington, in said District, to Jane Hart, at and for the sum $1450, and that said purchaser has fully complied with the terms of sale:

It is, thereupon, this 11th day of December, A. D. 1885, ordered, that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 11th day of January, A D 1886.

Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to said last named day.

By the Court: A. B. HAGNER, Justice, &c.
True copy. Test: 50 R J. MEIGS, Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 1st day of December, 1885.

JULIA E. CALLAHAN v. FRANCIS R CALLAHAN. } No 9724 Equity Docket, 25.

Application for divorce on the ground of adultery and desertion

On motion of the plaintiff, by Mr. Daniel E. Cahill, her solicitor, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
True copy. Test: 49 R. J MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 4th day of December, 1885.

AMELIA V. HAMILTON v The UNKNOWN HEIRS of WILLIAM N. GRAHAM, dec'd } No. 9729. Eq. Doc. 25

On motion of the plaintiff, by Mr. John J Weed, her solicitor, it is ordered that the defendants, the unknown heirs of William N. Graham, deceased, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: 49 R J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 10th day of December, 1885.

MARION V. JULIEN v. PHILIP A. JULIEN. } No. 9728 Eq. Doc. 25.

Application for divorce on the ground of desertion.

On motion of the plaintiff, by Mr. A B. Williams, her solicitor, it is ordered that the defendant, Philip A. Julien, cause his appearance to be entered herein on or before the first rule-day, occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.
A true copy. 50 Test: R, J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 10th day of December, 1885.

SUSAN G. CARTER v. CHARLES R. PLUMBE. } No. 26 521. At Law.

On motion of the plaintiff, by Mr. Dean, her attorney, it is ordered that the defendant, Charles R. Plumbe, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.
True copy. Test: 50 R. J MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 9th day of December, 1885.

FRANK D. SIMMONS, TRUSTEE, v JOSHUA HILL. } No. 26,545. At Law.

On motion of the plaintiff, by Mr. Kimball his attorney, it is ordered that the defendant, Joshua Hill, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day, otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.
A true copy. Test: 50 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. December 11, 1885.

In the matter of the Estate of Andrew K Long, late of the U S. Navy, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Elizabeth Foster Long.

All persons interested are hereby notified to appear in this Court on Friday, the 8th day of January next at 11 o'clock a. m., to show cause why Letters of Administration on the Estate of the said deceased should not issue as prayed. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B HAGNER, Justice.
Test: 50 H. J. RAMSDELL, Register of Wills.
SAMUEL B. GRIFFITH, Solicitor.

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